



STATE OF INDIANA

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February 28, 2011

Mr. Rocky M. Shroyer
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 11-FC-42; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. The Facility's response from Administrative Assistant David W. Barr is enclosed for your reference.

BACKGROUND

According to your complaint, the Facility denied your request for an incident report on the basis that releasing the report could jeopardize the safety of the Facility and because information in the report was part of an investigation conducted by the Facility. You argue that you are not seeking "investigative files." Rather, you seek an incident report "regarding the phone calls made to the prison by a family friend . . . who reported receiving threatening text messages from the offender's [sic] who robbed me and took a cellphone [sic]."

In response to your complaint, Mr. Barr acknowledges that the Facility received a request from you seeking access to three different incident reports naming two other offenders and a third person from outside the Facility. Two of the reports do not exist. The Facility withheld the third report on the basis that it is investigative in nature under 210 Ind. Admin. Code 1-6-2(e). The Department of Correction's ("DOC") policy is to exercise its discretion to deny offenders access to other offenders' official records.

ANALYSIS

The public policy of the APRA states, "[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties

of public officials and employees, whose duty it is to provide the information.” I.C. § 5-14-3-1. The Facility is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Facility’s public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Facility argues that the incident report you requested is exempt from disclosure due to DOC administrative code. The APRA states that a public agency “may not” disclose records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” I.C. § 5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), the DOC may classify as confidential information maintained on a person who has been committed to the department. Pursuant to this authority, the DOC has classified several categories of documents as “confidential information,” including information that, if disclosed, might result in physical harm to that person or other persons, as well as internal investigation information. 210 I.A.C. 1-6-2(3)(C), (E). Based on the Facility’s descriptions of the documents as investigatory in nature and its assertion that releasing the records could jeopardize the security of the Facility, it is my opinion that the exemptions cited by the Facility are applicable to the documents you requested. As such, the Facility did not violate the APRA when it denied your request. *See also Opinion of the Public Access Counselor 05-FC-40* (Davis, K., advising that correctional facility did not violate the APRA by denying a request for records regarding internal investigation information).

CONCLUSION

For the foregoing reasons, it is my opinion that the Facility did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: David W. Barr