



STATE OF INDIANA

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September 2, 2008

Richard Corbin
DOC #975153
Pendleton Correctional Facility
4490 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 08-FC-201; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Corbin:

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) by denying you access to records. A copy of the Facility's response to the complaint is enclosed for your reference. It is my opinion that the Facility is required to disclose personnel file information listed in I.C. § 5-14-3-4(b)(8).

BACKGROUND

You allege that you sent to the Facility on July 28, 2008 a request for copies of records related to an employee of the Facility. Specifically, you requested job title, job description, education and training background, previous work experience, information relating to the status of any formal charges, and factual basis for disciplinary action resulting in suspension, demotion or discharge of the employee. The Facility denied you access to the records, citing both Senate Bill 207 of the 2008 session of the General Assembly and citing I.C. § 5-14-3-4(b)(10), which excepts from disclosure at the discretion of the agency administrative or technical information that would jeopardize a record keeping or security system.

You filed this complaint on August 26, 2008, alleging that you require the record for a proceeding before another public agency. Because you have alleged one of the reasons for priority status provided in 62 IAC 1-1-3, priority status was granted.

The Facility responded to the complaint by letter dated August 29 from Robert Bugher, Legal Services Director for the Indiana Department of Correction ("Department"). The Department relies upon I.C. § 5-14-3-4(b)(23) for the denial. The Department contends that you are an offender and as such the Facility may deny you

access to personal information related to a correctional officer. The Department contends the information you have requested is personal information related to the officer. Additionally, the Department contends that serious safety and confidentiality concerns associated with allowing offenders to have access to personal information related to the staff has lead the Department to deny access to such information.

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 clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Facility 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).

The Facility asserts an exception to disclosure added to the APRA by the General Assembly in 2008. Effective July 1, 2008, the following records are excepted from disclosure at the discretion of the agency:

Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) the victim of a crime; or

(iii) a family member of a correctional officer or the victim of a crime;

or

(B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23).

Subsection 4(b)(8) of the APRA, though, requires disclosure of certain personnel file information. I.C. § 5-14-3-4(b)(8) provides that the following is excepted from disclosure at the discretion of the agency:

Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name. *Id.*

Here, the information you requested falls under the mandatory disclosure provisions of I.C. § 5-14-3-4(b)(8). While the Facility is afforded discretion under I.C. § 5-14-3-4(b)(23) to withhold from disclosure certain personal information that concerns or could affect the security of the Facility, it is my opinion that exception to disclosure does not override the mandatory disclosure provisions of I.C. § 5-14-3-4(b)(8).

Former Counselor Karen Davis addressed a similar issue in *Opinion of the Public Access Counselor 07-FC-34*. In that opinion, Counselor Davis referred to I.C. § 5-14-3-4(c), which provides the following:

Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

In *Opinion 07-FC-34*, Counselor Davis suggested that subsection 4(b)(8) “trumps” subsection (4)(b)(10). I do not agree with the analysis, but I agree with the conclusion. In my opinion, subsection 4(b)(8) does not require or direct certain records to be made, as contemplated by subsection 4(c). In my opinion, though, subsection 4(b)(8) provides a clear mandate that certain records, if they are maintained by the public agency, must be disclosed upon request. Because these records are a specific exception to the general exception to disclosure for personnel records, it is my opinion that another discretionary exception contained in subsection 4(b) cannot trump the mandate for disclosure. In other words, it is my opinion the new subsection, I.C. § 5-14-3-4(b)(23), provides that an agency may exercise its discretion to withhold records under the provision so long as those records are not required by another statute to be disclosed.

CONCLUSION

For the foregoing reasons, it is my opinion that the Facility is required to disclose personnel file information listed in I.C. § 5-14-3-4(b)(8).

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Robert Bugher, Indiana Department of Correction
David Barr, Pendleton Correctional Facility