



STATE OF INDIANA

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May 27, 2009

Darryl Hopkins
DOC #901220
PO Box A
New Castle, Indiana 47362

Re: Formal Complaint 09-FC-111; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction New Castle Facility

Dear Mr. Hopkins:

This advisory opinion is in response to your recent formal complaint alleging the Indiana Department of Correction New Castle Facility ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion that if the New Castle Facility is operated under a public-private partnership agreement, the records directly relating to the agreement are disclosable.

BACKGROUND

You allege that on April 12, 2009 you submitted two requests for information to the Facility. You provide a copy of the response you received wherein the Facility denied you access to the requested records on the basis that the Facility is operated by a third party which is not a public agency. You filed the present complaint, alleging the Facility violated the APRA by denying you access to the records. The complaint was postmarked on April 25, and my office received it on April 30.

My office sent a copy of the complaint to the Department and invited the Department to respond to the complaint. To date my office has not received a response to the complaint.

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. Any person has the right to inspect and copy the public records of a public agency 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).

In an undated letter you received on April 16, Mike Smith of The GEO Group, Inc., indicated that you were being denied access to records on the basis that The GEO Group, Inc., which operates the Facility through a series of contracts with the State of Indiana, is not a public agency. Mr. Smith based the contention on I.C. § 5-14-3-2.1, which exempts from the definition of public agency a contractor who provides goods or services through a contract with a governmental entity.

I do not have the benefit of a response from the Department asserting that the Facility is not a public agency. Even if the Facility is not a public agency, at the very least the Facility is operated through a public-private partnership. In that case, I.C. § 5-23-7-1 provides that certain records of the entity are subject to inspection and copying:

Records of an operator that is a party to a public-private agreement are subject to inspection and copying to the same extent the records would be subject to inspection and copying if the operator were a public agency under IC 5-14-3. This section is limited to records directly relating to the public-private agreements.
I.C. § 5-23-7-1.

I do not have enough information here to determine whether the Facility is a public agency for the purposes of the APRA. But even if it is not, the Facility is still required to make available for inspection and copying all records directly relating to the agreement by which it is operated.

CONCLUSION

For the foregoing reasons, it is my opinion that if the New Castle Facility is operated under a public-private partnership agreement, the records directly relating to the agreement are disclosable.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Robert Bugher, Indiana Department of Correction