

March 12, 2001

Mr. Marland H. Gibson
#952537 B4-202*DSU
P.O. Box 557
Westville, Indiana 46391-0557

Re: *Advisory Opinion 01-FC-012*; Alleged Denial of Access to Public Records by the Indiana Department of Correction.

Dear Mr. Gibson:

This is in response to your formal complaint, which was received on February 12, 2001. You have alleged that the Indiana Department of Correction ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you requested a copy of a particular departmental administrative procedure and were denied, despite your willingness to pay for the copy. Mr. Steven Huckins and Ms. Pam Pattison of the Department responded in writing to your complaint and copies of their responses are enclosed for your reference.

For the reasons set forth below, it is my opinion that you were entitled to a copy of the department's administrative procedure under the APRA and that the denial was not proper. According to the information provided by Ms. Pattison, you have now received a copy of the procedure.

BACKGROUND

According to your complaint, on January 29, 2001, you made a written request for a copy of a specific departmental policy, DOC Administrative Procedure 01-01-105. You also submitted a form indicating that you would pay for the copy. Mr. Huckins, who serves as a paralegal for the Department, denied your request without stating a specific reason for the denial. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Huckins responded that he was not required to provide any photocopies to you, only to permit inspection of legal materials such as the policy in question. Ms. Pattison later stated that the Department determined that you should have been provided a copy of the administrative procedure in question and that Mr. Huckins was instructed to provide it to you. Ms. Pattison indicated in her letter that a copy has now been provided to you.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

The public agency has the burden of proving that a public record is not disclosable. Ind. Code § 5-14-3-1. A denial of a written public records request must also be in writing and include the a statement of "the specific exemption . . . authorizing the withholding of all or part of a public record." Ind. Code § 5-14-3-9(c).

Although your written request for a copy of the Department's administrative procedure was denied in writing, Mr. Huckins failed to provide any explanation for that denial. According to Ms. Pattison's letter, upon further review of this matter, the Department provided a copy of the administrative procedure to you because there was no basis for denial. It is my opinion, therefore, that the Department's original denial of access to a photocopy of DOC Administrative Procedure 04-01-105 was improper under the APRA.

CONCLUSION

It is my opinion that you were entitled to a copy of the DOC Administrative Procedure 04-01-105 under the APRA and that the denial of your request was not proper.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Stephen Huckins, MCF Ms. Pam Pattison, DOC
