



STATE OF INDIANA

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October 25, 2010

Mr. Michael J. Shepard
DOC # 181080
Putnamville Correctional Facility
1946 W. U.S. Hwy. 40
Greencastle, IN 46135

*Re: Formal Complaint 10-FC-222; Alleged Violation of the Access to
Public Records Act by the Putnamville Correctional Facility*

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Putnamville Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* As of today, we have not received a response from the Facility.

BACKGROUND

In your complaint, you allege that the Facility denied you access to certain records on September 9, 2010. You state that you wish to access the records in conjunction with filing a legal action. You are seeking a copy of your "offender file per [the] APRA."

ANALYSIS

The public policy of the APRA states that "(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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, it is unclear to me why the Facility denied your request. Without the benefit of a response from the Facility, I do not have sufficient information to determine whether or not the substance of the denial violated the APRA. Under the APRA, a public

agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Facility has not provided a justification for withholding the records at issue here, it is my opinion that the Facility has failed to carry that burden.

If the Facility cannot justify withholding the records under the APRA, I encourage the Facility to release the records to you as soon as possible. To the extent the Facility persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Facility to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

I note that 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 Indiana Department of Correction (“DOC”) may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC has classified several categories of documents as “confidential information,” including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. 210 I.A.C. 1-6-2(3)(A), (C), (E). If the records you seek constitute classified records under these rules, the Facility would not violate the APRA by denying your request. *See also Opinion of the Public Access Counselor 05-FC-40.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Facility has not sustained its burden of proof to demonstrate that it had a legal basis to withhold the records you requested.

Best regards,



Andrew J. Kossack
Public Access Counselor