

June 27, 2003

Cornelius Johnson
#914424 24-3R
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: *Advisory Opinion 03-FC-41*: Alleged Denial of Access to Public Records by the Indiana Department of Correction, Pendleton Correctional Facility.

Dear Mr. Johnson:

This is in response to your formal complaint, which was received on May 30, 2003. You have alleged that the Indiana Department of Correction, Pendleton Correctional Facility ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department wrongfully denied you access to inspect your offender file on May 28, 2003. Ms. Pam Pattison of the Department responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not deny you access to public records with respect to your May 28th public records request.

BACKGROUND

According to your complaint, you made a verbal request to review your institutional packet to your counselor on May 28, 2003. You stated that your counselor told you that you would not be able to review the records because he did not have time to make them available to you. You then filed your formal complaint with this Office.

In her response, Ms. Pattison stated that it is the Department's position that you were not denied access to the opportunity to review your institutional packet. With your complaint, you submitted a copy an offender grievance complaint that you filed with the Department prior to filing your formal complaint with this Office. According to that complaint form, you were advised that you would in fact get access to your packet once the packet had been released to your grievance specialist by the Packet Room.

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." 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). A public agency is generally not required to create new records in order to respond to a public records request. See generally, Ind. Code chapter 5-14-3. A person who has been denied access to public records under the APRA may file an action in circuit or superior court to compel the public agency to allow inspection and copying of the public records. Ind. Code §5-14-3-9(d).

A public agency is required to respond to a public records request that has been made in person within twenty-four (24) hours after the agency receives it. Ind. Code §5-14-3-9(a). With respect to your May 28th request, it appears that your counselor did in fact respond that you would be able to inspect your packet, it was just that he was not able to provide it to you at that moment. The APRA does require a response within the twenty-four (24) hour time period, but does not set a time for production by the public agency. Generally, the standard for production of public records requested is whether the time for production is reasonable based upon the request. For this reason, it is my opinion that the Department did provide you with a response in a timely manner under the APRA, so you were not denied access merely by the fact that the counselor did not produce your packet to you upon demand. Ms. Pattison also notes in her response to your complaint that you were advised in writing through the Offender Grievance process that you would in fact be provided with access to your packet. Since the time you filed your complaint you may have already been provided with access to your packet, and again it is incumbent upon the Department to ensure that the public records in question are or were produced within a reasonable time after you requested access.

CONCLUSION

It is my opinion that the Department of Correction, Pendleton Correctional Facility, did not deny you access with respect to your verbal request of May 28, 2003.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Pam Pattison, IDOC w/o enclosure