

January 6, 2005

Mr. Clyde Piggie
#933044
Pendleton Correctional Facility
P.O. Box 30
Pendleton, Indiana 46064

Re: Formal Complaint 04-FC-225; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Piggie:

This is in response to your formal complaint alleging that the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act by denying you the right to inspect records. I find that the Facility has not violated the Access to Public Records Act with respect to your request.

BACKGROUND

On October 6, 2004, you submitted a written request for records to David Barr at the Facility. Specifically, you requested the opportunity to inspect the following categories of records: 1) records relating to the name and title of contract nurses in the agency that provides health care services to Pendleton; 2) your own medical packet and "glycemic index on diabetic;" and 3) the plan of correction for complaint #20041263 which is a complaint that you filed with the state department of health. You enclosed a copy of the November 4 memorandum that you received from David Barr responding to your request. With respect to your request for the name and title of contract staff, he informed you that no records are maintained by the Facility on nurse contract staff, and the Facility is not required to create a record to respond to your request for this information. With respect to your medical packet, he informed you that you may review your packet and that you should send a request to Pendleton Healthcare Facility to set a time to review your packet. Mr. Barr stated that the Facility has no record of the complaint that you filed with the department of health. Finally, Mr. Barr stated that the glycemic index may be obtained from Health Care Services. He also stated that you could receive copies of the records that are maintained by the Facility upon your remittance of a copying charge at \$.10 per page.

Your complaint to the public access counselor followed on December 7, 2004. In your complaint, you state that the Facility rules allow you to inspect records in the Parole Room, making it unnecessary for you to obtain copies of records. You also dispute Mr. Barr's assertion that the Facility is unaware of the department of health complaint you refer to.

I sent a copy of your complaint to David Barr. He sent a written response, which I enclose for your reference. In his response, Mr. Barr includes a copy of the Facility's first response to your October 6 request, which was a letter dated October 7 acknowledging receipt of your request and indicating that the Facility was processing your request. In his substantive response to your complaint, he stated 1) that the Facility did not maintain contract records; 2) that you are not permitted to inspect records because of Facility policy that allows inspection only in the Administration Building, which is not accessible to you; 3) that the department of health plan of correction that you reference is not maintained by the Facility; and 4) that Facility policy puts certain time restrictions on an offender's review of his medical packet, but the record is being made available to you.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless the records are subject to nondisclosure under Ind.Code 5-14-3-4. IC 5-14-3-3(a).

With respect to your request for a list of names and titles of contract personnel in the Facility's health service, the Facility has responded that it does not maintain such a list and are not required to create a list. The response of the Facility is consistent with the requirements of the Access to Public Records Act. The law does not require that an agency create a particular record to satisfy a person's request for information. Rather, the law requires only that an agency disclose a record that it maintains upon request, unless an exception to disclosure applies. I do not find any violation of the Access to Public Records.

In response to your request for your own medical packet and glycemic index, the Facility has stated how you may obtain this record, and I do not discern any violation of the law from the restrictions that the Facility must impose in order to maintain order. *See Opinion of the Public Access Counselor 04-FC-43.*

The Facility's response to your request for a plan of correction in connection with department of health complaint #20041263 is a firm denial that such a record exists. I note that you have enclosed correspondence from the state department of health in which Program Director Joyce Elder states that the facility had been cited in July and August of 2004 and was expected to submit a suitable plan of correction. If in fact the Facility maintains this record, it must disclose it to you or cite to a statute that allows denial of the record. However, the Facility states it does not maintain the record. To the extent that you believe that the Facility is withholding the plan of correction, your remedy is to file an action under IC 5-14-3-9(e). However, the Elder letter states that at the time the complaint is closed, you are entitled to a copy

of the plan of correction from the department of health. It appears that you may be able to secure a copy of the plan from the department of health, if you send a request to that agency.

CONCLUSION

For the foregoing reasons, I find that the Pendleton Correctional Facility did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. David Barr