

March 10, 2004

Mr. Scott J. Cooper
P.O. Box 22327
Indianapolis, Indiana 46222-0327

*Re: Formal Complaint 04-FC-23; Alleged Denial of Access to Public Records by the
Indiana Department of Correction*

Dear Mr. Cooper:

This is in response to your formal complaint alleging that the Indiana Department of Correction (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it failed to timely produce records or respond in substance to your December 19, 2003, request for records. A copy of the Department's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Department did not violate the APRA.

BACKGROUND

On December 19, 2003, you hand-delivered a written request for records to the Department. Your request sought to inspect and copy reports generated in any investigation conducted as a result of a complaint you filed against a correctional officer regarding an incident in April 2003, and regarding a second incident occurring approximately one month later. The Department responded in writing acknowledging the receipt of your request and indicated that you would be notified as soon as any non-confidential responsive records became available. You again contacted the Department on January 19, 2004, and advised the Department that you had not yet received the responsive records. You asked to be notified when the records became available. On February 9, 2004, when no response was forthcoming, you signed and submitted the instant complaint with this office. You allege that the Department's failure to tender the records or otherwise substantively respond to your request within a reasonable time constitutes a denial of access to public records in violation of the APRA. In response, the Department denies that it violated the APRA in the manner in which it responded to your record request. The Department further produces a copy of a February 23, 2004, letter the Department tendered to you after the complaint in the instant action was filed, advising you that your request was denied pursuant to Indiana Code 5-14-3-4(a)(2) (exempting disclosure of documents declared confidential by rules adopted by a public agency), and 210 IAC 1-6-2 (classifying certain offender information including internal investigation information confidential).

ANALYSIS¹

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. When a public records request is made in writing and hand-delivered to the public agency, the public agency is required to respond to that request within 24 hours. IC 5-14-3-9(a). A timely response to the request does not mean that the public agency must produce or expressly decline to produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. Production or inspection of the records must occur within a reasonable time of the request. There are practical reasons for such a rule. A public agency may be able to produce public records immediately in some cases, but more time may be required for production when records are not in a central repository, are archived off-site, include information that may require counsel or other review for confidentiality, or include disclosable and nondisclosable information that the public agency must separate for purposes of producing what is disclosable. The effect of interpreting Indiana Code 5-14-3-9 to require public agencies to produce records within a specific period of time would have the effect, in some cases, of requiring public agencies to stop activity on all other matters in order to provide the records requested. While providing information is an essential function of public agencies, the APRA also specifically provides that public agencies shall regulate any material interference with the regular functions or duties of their offices. IC 5-14-3-1; IC 5-14-3-7(a).

The Department's substantive response in this matter came slightly more than 60 days after you submitted your written request. I am not prepared to declare this an unreasonable period of time under these facts. Your request sought information contained in reports involving two different incidents. Moreover, both incidents at issue occurred more than six months prior to the time you made your request. Further, the initial response indicated that some internal review of any responsive records would be required to determine what records or portions of those records could be disclosed for your review and inspection. The nature of the records sought (internal investigation records) and the state laws ultimately cited in support of nondisclosure further suggest that the records or portions of the records are required to be maintained as confidential. Given these factors, I do not find that the Department's failure to produce the records or a substantive response denying production of the records prior to the time you filed your complaint to be unreasonable and thus a constructive denial in violation of the APRA.²

¹ Your complaint is limited to the claim that the Department's failure to provide a substantive response within a reasonable period of time violates the APRA. I do not reach the question of whether the Department properly denied you access to records when, in its February 23, 2004, letter, it characterized the records you were seeking as confidential pursuant to state rule. Neither do I address the timeliness of the Department's initial response. It appears that the written response was dated December 23, 2003, more than 24 hours after you hand-delivered your written request; however, your complaint suggests that you received a timely response, and you make no claim here challenging the Department's initial response. I do note that the Department's initial response was otherwise lacking in that it failed to provide you with a date certain when the Department would either provide you with the records or a substantive response, or advise you of its status in seeking to comply with your request.

² Additional facts may warrant a contrary result. What is reasonable depends on the nature and circumstances of the request. If, for example, the responsive documents were readily identifiable and accessible, or internal review was

CONCLUSION

For the reasons set forth above, I find that the Department did not violate the APRA in failing to produce documents or otherwise respond to your request prior to the time you filed your complaint.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Pam Pattison