

April 12, 2004

Mr. Lando Logan  
No. 973822  
Maximum Control Facility  
P.O. Box 557  
Westville, Indiana 46391-0557

*Re: 04-FC-43; Alleged Violation of the Access to Public Records Act by the  
Maximum Control Complex*

Dear Mr. Logan:

This is in response to your formal complaint alleging that the Maximum Control Complex (MCC), an institution of the Indiana Department of Correction (Department), violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied your request to inspect various public records of that institution. The Department responded to your complaint on behalf of the MCC, and a copy of that response is enclosed for your reference. For the reasons set forth below, it is my opinion that the MCC did not violate the APRA by denying your request to inspect the public records of that maximum-security facility.

#### BACKGROUND

On February 11, 2004, you submitted a written request to the MCC seeking information on the procedures required by that institution for you to "review the MCC recreational/financial records." The MCC responded that the records were available only in the administrative offices of that facility. The MCC advised you that because offenders are not allowed to enter the administrative offices, the only way for you to access the records was for the MCC to provide you with copies at your expense. The MCC further notified you that the responsive records would equal or exceed 100 pages. On February 13, 2004, you again wrote the MCC and declined the invitation to have copies made for you. At that time you requested the opportunity to review the responsive records in the administrative offices or in some other area of the facility. The MCC responded, again stating that you could have copies provided to you at your expense, but that you would not be permitted to inspect the responsive records. On March 3, 2004, you renewed your request to inspect the records challenging the veracity of the MCC's claim that

offenders were not allowed in the administrative offices of the facility, and again demanding that the records be made available to you for your inspection. When the MCC denied that request for the third time, you brought this complaint.

The Department responds asserting that the MCC is a maximum-security prison, and you are maximum-security offender. Citing safety and security reasons, the Department avers that the MCC properly declined to allow you physical access to inspect the records at issue. The Department further asserts that you have not been denied access to the documents. Rather, on each occasion you were told that you would be provided with copies of the documents at your expense.

#### 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.” IC 5-14-3-1. Accordingly, “[a]ny person may *inspect and copy* the public records of a public agency during the regular business hours of the agency” except as otherwise provided by the law. IC 5-14-3-3(a) (emphasis added). A public agency may not deny or interfere with the exercise of the right to inspect and copy public records, and shall either provide the requested copies or allow the person requesting the records to make their own copies. IC 5-14-3-3(b). The plain language of the statute provides that the party making the request is entitled to obtain copies of the responsive records or to inspect the responsive records and make copies as desired upon that inspection. IC 5-14-3-3; *see* IC 5-14-3-2 (defining “Inspect” and “Copy”).

That said, in some instances the option of inspection or copying may not be available. For example, when a public agency does not have “reasonable access to a machine capable of reproducing the record,” the person requesting the record “is only entitled to inspect and manually transcribe the record.” IC 5-14-3-8(e). This might be the situation where a person is requesting a certain kind of record or a certain format for the copy, such as a compact disc or an audio or video tape. If the agency is unable to make a copy with its equipment, the APRA does not require the agency to outsource the copy work or to make an investment in equipment that is capable of making the requested copy.

Similarly, circumstances may exist where physical inspection of a record is not practical or even possible, and reasonable access can only be accomplished through production of a copy of the record. Such is the case here. Certainly, as an incarcerated offender, it is not possible for you to appear at a public agency during its normal business hours and inspect the records of that agency. *See* IC 5-14-3-3(a). Your status is no less significant when seeking to inspect the records of the facility where you are incarcerated. The APRA is a statute of general application, which means the APRA governs unless some other more specific statute addresses the issue.

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The Department, through its various institutions, is charged with the authority and discretion to ensure the safety and security of the institution and of the offenders under its control. *See, e.g.*, IC 11-11-6-1. In this regard, Indiana law provides the Department and its institutions with the authority to restrict your movement and access within the Department's institutions. This has the net effect of restricting your access to inspect the public records of the facility within the facility where they are kept. In my opinion, the institutional safety and security restrictions authorized by Indiana law and exercised by the Department and the MCC on your access to areas of the MCC, even to those areas where public records are maintained, does not violate your rights under the APRA. It is my further opinion that the APRA does not require the Department or any of its institutions to allow you to inspect the public records in a "secure area," or to otherwise bring the records to you so that you may inspect them.

In the circumstances presented here, it was not unreasonable and not a violation of the APRA for the Department and the MCC to require that your access to public records of that institution be limited to having the Department provide you with copies of any non-confidential public records responsive to your request. This alternative was offered to you on three separate occasions. While I appreciate that you do not want to pay for copies of records that are responsive to your request, the APRA does entitle the MCC to recoup the cost of providing you with copies of any responsive records, and to receive that fee in advance of production.

#### CONCLUSION

For the reasons set forth above, it is my opinion that the MCC did not violate the APRA by denying your request to inspect the public records of that maximum-security facility.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. Stephen J. Huckins  
Ms. Pam Pattison