



STATE OF INDIANA

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October 12, 2005

Michael Hunt
DOC # 961894
Miami Correctional Facility
P.O. Box 900
Bunker Hill, IN 46914

Re: Formal Complaint 05-FC-182; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Hunt:

This is in response to your formal complaint alleging that the Indiana State Prison ("ISP") violated the Access to Public Records Act ("APRA").

BACKGROUND

On September 12, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint alleges that the ISP has denied your public records request of September 7, 2005. You complain that you were denied the opportunity to inspect the records in the office of Sheri Hatchel prior to paying for a copy of the records.

Mr. Barry Nothstine responded to your complaint on behalf of the ISP, by letter dated September 14, 2005. A copy of that letter is enclosed for your reference. Mr. Nothstine did not address the refusal to allow you the opportunity to inspect the records prior to purchasing copies. He instead asserts that your request was denied because it was not made on the appropriate form. Mr. Nothstine stated that you were advised of the requirement to file a request for public records on the required form in several ways. On March 7, 2005 a new ISP policy went into effect requiring public records requests to be submitted on a specific request form. The ISP provides copies of the request form in the law department. Information regarding the new policy was broadcast to the offender population of the ISP on March 4, 2005. In a memorandum directly addressed to you, dated March 22, 2005, Mr. Nothstine specifically advised you that the proper form must be used and informed you as to where the forms could be obtained. Additionally, an infomercial regarding the use of the proper request form was broadcast several times a day for 18 days. Finally, on April 28, 2005 Mr. Nothstine again informed you in a letter specifically addressed to you that you must submit requests for records on the proper form.

ANALYSIS

Requirement to Submit Request for Access to Public Records on a Form Provided by the Agency

Any person may inspect and copy the public records of a public agency during the regular business hours of the agency, except as provided in IC 5-14-3-4. IC 5-14-3-3(a). A request for inspection and copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

IC 5-14-3-3(a).

Mr. Nothstine explained that you have been repeatedly informed that your requests must be submitted on the proper request form. He also advised you that the form is available to you in the library. It is not a violation of the APRA to require that a requestor use the specified form in making requests for records. This office has previously held that an agency may not ignore a request that is not submitted on the proper form, but must inform the requestor of the proper form to submit a request for public records. See *Opinion of the Public Access Counselor 03-FC-123*. However, you have been informed on several occasions to utilize the available form to submit a request for public records to the ISP. Therefore, it is my opinion that the ISP need not repeatedly inform you about the use of the proper form. The ISP did not violate the APRA when it did not fulfill your request for records because it was not on the correct form.

Opportunity to Inspect Records before Copying

You have complained that you were not provided with the opportunity to inspect the records prior to obtaining a copy of the records. 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. The ISP is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(1)(1). Accordingly, any person has the right to inspect and copy the public records of the ISP 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. IC 5-14-3-3(a).

However, the APRA is a statute of general applicability, which means the APRA governs unless some other more specific statute addresses the issue. Therefore, the question here is whether there is some other statute that governs your right to inspect the records in the business office of the facility. It is my opinion that another statute does govern your ability to access the business office of the facility and therefore its records. Indiana Code section 11-11-6-1 provides in relevant part that "[t]he department shall adopt policies and procedures for the protection of committed persons, including the monitoring of committed persons whose presence in the general population of a facility or program constitutes a threat of physical danger to other persons." It is my opinion that Indiana Code section 11-11-6-1 allows the facility to restrict an offender's access to areas of the facility, even those areas where public records are maintained.

Further, the APRA does not require the ISP to transfer records to a more convenient or accessible location in order to provide an opportunity for you to inspect the records. Therefore, it is my opinion that the ISP did not violate the APRA by prohibiting you from entering the business office for the purpose of inspecting public records. Likewise, the ISP was not required to make other arrangements for you to inspect the records.

CONCLUSION

For the foregoing reasons, I find that the Indiana State Prison did not violate the Access to Public Records Act when it did not treat your request as a request for public records due to your failure to utilize the proper form, of which you were well aware. Additionally, the Indiana State Prison did not violate the Access to Public Records Act when it did not provide you with an opportunity to inspect the records prior to purchasing copies.

Sincerely,

Karen Davis
Public Access Counselor

cc: Barry Nothstine