



STATE OF INDIANA

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September 16, 2009

Mr. Lawrence Peterson, # 892938
Indiana State Prison
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 09-FC-187; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Peterson:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction (“IDC”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, my opinion is that the IDC did not violate the APRA.

BACKGROUND

According to your complaint, the IDC denied your request for access to records regarding accusations made against you by other inmates. The IDC cited 210 Ind. Admin. Code 1-6-2(3)(A), (C), and (E) in support of its denial. You argue that the IDC should have produced the records you requested.

The IDC’s response to your complaint is enclosed for your reference. The IDC’s response lists the documents you requested and cites the basis for its denial of access with regard to each:

1. A copy of the sexual violence assessment tool. The IDC responds that this document constitutes “offender diagnostic information” and is therefore exempt from disclosure under 210 I.A.C. 1-6-2(3)(A).
- 2-4. A copy of (2) the superintendent’s incident report; (3) the investigation report of sexual violence; and (4) the staff person’s report of the incident. The IDC argues that these documents are exempt from disclosure by 210 I.A.C. 1-6-2(3)(C) because their release might result in physical harm to another person, and by 210 I.A.C. 1-6-2(3)(E), which prohibits the release of internal investigation information.

- 5-6. A copy of (5) the PREA coordinator's report designating you a sexual predator; and (6) the PREA committee's minutes concerning you and predator status. The IDC responds that these records are exempt from disclosure pursuant to 210 I.A.C. 1-6-2(3)(A), which prohibits the release of offender diagnostic information because of its confidential nature, and 210 I.A.C. 1-6-2(3)(C), which prohibits the release of information that might result in physical harm to another person.
7. A copy of any victim's notes to staff and the date such notes were received. The IDC claims that these records are exempt from disclosure by 210 I.A.C. 1-6-2(3)(C) because their release might result in physical harm to another person.

ANALYSIS

The public policy of the APRA states, “[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.” I.C. § 5-14-3-1. The IDC does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the IDC during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The IDC also does not dispute that the records you have requested are public records. Rather, the IDC argues that the records are exempt from disclosure due to the IDC's administrative rules. The APRA states that a public agency “may not” disclose records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” I.C. § 5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), the IDC may classify as confidential information maintained on a person who has been committed to the department. Pursuant to this authority, the IDC has classified several categories of documents as “confidential information,” including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. 210 I.A.C. 1-6-2(3)(A), (C), (E). The IDC cited each of these exemptions when it rejected your request.

Based on the descriptions of the documents you requested, it is my opinion that the exemptions cited by the IDC are applicable to the documents you requested and, therefore, the IDC did not violate the APRA when it denied your request. *See also Opinion of the Public Access Counselor 05-FC-40* (Davis, K., advising that correctional facility did not violate the APRA by denying a request for records regarding internal investigation information).

CONCLUSION

For the foregoing reasons, it is my opinion that the IDC did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Robert D. Bugher, Indiana Department of Correction