



STATE OF INDIANA

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September 30, 2009

Mr. Joseph Williams-El
DOC # 910763
910763 One Park Row
Michigan City, IN 46360

Re: Formal Complaint 09-FC-196; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Williams-El:

This advisory opinion is in response to your formal complaint alleging the Indiana State Prison ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code §5-14-3-1 *et seq.*, when it failed to produce records regarding religious visitor times and dates. For the following reasons, my opinion is that ISP violated the APRA insofar as it failed to respond to your written request within seven (7) days, but ISP did not otherwise violate the APRA because the documents you seek do not exist.

BACKGROUND

In your complaint, you allege that you submitted a written request for access to public records on August 4, 2009. In it, you requested a copy of the visiting dates and times of a Temple representative named Clifford Jackson-BEY. You allege that documents containing the dates and times of religious visitors are public records. Along with your complaint, you enclosed a response from the ISP on August 20, 2009, which acknowledged your request and initially denied it on the basis that the information was "not considered public information."

My office forwarded a copy of your complaint to ISP for a response. ISP Legal Services Director Robert Bugher's response is enclosed for your reference. In it, Mr. Bugher states that ISP searched for the documents that you requested, but none could be located. Additionally, Mr. Bugher says that a review of facility records does not indicate that Mr. Jackson-BEY visited anyone housed at ISP.

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."

I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a). The ISP is clearly 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 ISP during regular business hours unless the public records are exempt under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Here, ISP failed to respond to your written request within the required seven (7) days. However, ISP's search of its records failed to produce the documents that you requested. The APRA governs access to the existing public records of a public agency; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA. It is my opinion that ISP did not violate the APRA when it failed to produce the records you requested because those records do not exist.

CONCLUSION

For the foregoing reasons, it is my opinion that the ISP violated the APRA when it failed to respond to your written request within seven (7) days, but ISP's did not violate the APRA by denying you access to records that do not exist.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Robert D. Bugher, Indiana Department of Correction