



STATE OF INDIANA

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March 25, 2011

Rocky M. Shroyer
DOC #: 956193
4490 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 11-FC-59; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("PCF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, when it refused to produce records regarding an incident at the facility. David W. Barr responded on behalf of Pendleton Correctional Facility. Mr. Barr's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on October 13, 2010, correctional officers for PCF read, withheld, and confiscated your outgoing mail.¹ You also allege that the same correctional officers prepared an incident report in the course of investigating this mail. On January 25, 2011, you filed a records request with Mr. Barr seeking a copy of the incident report. On February 1, 2011, Mr. Barr issued a written denial of your request, citing 210 Ind. Admin. Code 1-6-2(3)(E) and generally to I.C. § 5-14-3-4. Mr. Barr argues that the "incident report is investigative in nature, and as such, is exempt from disclosure under 210 I.A.C. 1-6-2(3)(E) and I.C. § 5-14-3-4."

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

¹ You allege a violation of Indiana Code 11-11-3-4 when "correctional officers of PFC read, withheld and confiscated your outgoing mail." This type of allegation is outside of the purview of this office, *see* I.C. § 5-14-4-10, and as such, will not be addressed in this opinion.

disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). PCF 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 PCF 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, PCF complied with the APRA by responding to your January 25th request on February 1st.

As to the substance of your records request, an agency must not disclose a record 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 Indiana Department of Correction (“DOC”) may classify as confidential information maintained on a person who has been committed to the department. Pursuant to this authority, the DOC has classified as confidential “internal investigation information.” 210 I.A.C. 1-6-2(3)(E). Because PCF compiled the requested records in the course of an internal investigation, PCF did not violate the APRA in denying your request.

CONCLUSION

For the foregoing reasons, it is my opinion that PCF did not violate the APRA when it denied you access to internal investigation information.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: David W. Barr