



STATE OF INDIANA

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April 25, 2011

Mr. Michael A. Smith
5501 S. 1100 W.
Westville, IN 46391

Re: Formal Complaint 11-FC-79; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your complaint, you allege that the DOC denied your request for a copy of an incident report concerning an incident that occurred at the Westville Correctional Facility (the "Facility"). You state that the report "lists information about an incident involving an officer and an offender there [sic] is no social security #'s or confidential information [in the report]."

Facility Litigation Liaison John F. Schrader responded to your request by citing to Ind. Code § 5-14-3-4(a)(6) and 210 Ind. Admin. Code 1-6-2(E). He claimed the report is an internal document that contains expressions of opinion or speculation and that were expressed for the purpose of internal decision making. Moreover, the report was utilized in an internal Facility investigation.

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. DOC 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 DOC's public records during

regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

With regard to your request for a court order, Mr. Schrader denied your request based on 210 I.A.C. 1-6-2(E), which classifies as confidential information internal investigation information. The APRA provides 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), DOC may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC 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). Therefore, if the report you requested constitutes an internal investigation report, as Mr. Schrader claims, the DOC did not violate the APRA by denying your request. *See also Opinion of the Public Access Counselor 05-FC-40.*

Because the DOC had legal authority to withhold the record under 210 I.A.C. 1-6-2(E), it is unnecessary to analyze DOC’s denial based on subsection 4(a)(6) of the APRA.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: John F. Schrader