



STATE OF INDIANA

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July 18, 2012

Raymond McGraw
DOC 883037
4490 Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-170; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. McGraw:

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.* David W. Barr, Administrative Assistant, responded on behalf of the PCF. His response is enclosed for your reference.

BACKGROUND

You allege that you submitted a request for video footage, conduct reports, and all documents pertaining to the allegation that you and Tamika Williams attempted to traffic on June 18, 2011. The PCF denied your request pursuant to I.C. § 5-14-3-4(b)(23), I.C. § 5-14-3-4(b)(1), Administrative Procedure 00-01-103, and that copies of the reports sought were provided in your facility packet and at the conclusion of the disciplinary hearing.

In response to your formal complaint, Mr. Barr advised that the PCF acknowledged the receipt of your written request pursuant to the requirements of I.C. § 5-14-3-9(b). The PCF denied your request for videos pursuant to I.C. § 5-14-3-4(b)(23), as records released to an offender concerning another offender could jeopardize the safety and security of a jail or correctional facility. As to your request for conduct reports, a copy of the conduct report and all other supporting documents are given to each offender at the conclusion of the disciplinary hearing. This has been related to you and you have been informed that the records are part of your facility packet and can be accessed through your case worker. Lastly, documents pertaining to Ms. Williams were denied pursuant to Administrative Procedure 00-01-013 as reports generated during investigations shall be considered confidential to the extent provided by state law and Department policies and procedures.

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.” *See* I.C. § 5-14-3-1. The PCF is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the PCF’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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, the PCF acknowledged in writing the receipt of your request within seven days of its receipt. As such, it is my opinion that the PCF complied with the requirements of section 9 in responding to your request.

It is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure to an “offender” for a record that contains information that would concern or affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
- (ii) a law enforcement officer (as defined in IC 35-31.5-2-185);
- (iii) a judge (as defined in IC 33-38-12-3);
- (iv) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), a judge (as defined in IC 33-38-12-3), or a victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility. I.C. § 5-14-3-4(b)(23).

To the extent that your request for video footage was denied pursuant to (b)(23), it is my opinion that the PCF could properly deny your request to withhold records that could



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concern or court affect the security of the PCF. *See Opinions of the Public Access Counselor 11-FC-192; 11-FC-231; 11-FC-273.*

Pursuant to I.C. § 11-8-5-2(a), the PCF has authority to promulgate administrative rules to "classify as confidential . . . personal information maintained on a person who has been committed to the department or who has received correctional services from the department." The Department of Corrections ("Department") may keep confidential information from the offender or other persons unless ordered to disclose by a court, for research purposes or if the Commissioner of the Department determines there is a compelling public interest to disclose them. *See* I.C. § 11-8-5-2(b). The Department has classified certain offender records as confidential pursuant to 210 IAC 1-6-2 and an offender, or his agent's, rights to access confidential or restricted information are set forth at 210 IAC 1-6-4. Department Policy 01-04-104 and 00-01-103, which further addresses access to offender records, is based upon the Department's administrative rules. *See Opinion of the Public Access Counselor 02-FC-46.*

The PCF has advised that copies of conduct reports and all other supporting documents are given to each offender at the conclusion of the Disciplinary Hearing. You were informed of this fact and that the record would be available in your facility packet. Pursuant to 01-04-104, offenders may request to review their offender records or "Packet" on an annual basis and that the request may be denied if not submitted in accordance with WVCF's operational procedures. The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). The Public Access Counselor has issued multiple opinions that have provided that a public agency is not required to provide duplicative copies of the same record. *See Opinions of the Public Access Counselor 07-FC-19; 08-FC-75; and 08-FC-259.* Thus, to the extent that the PCF has provided you with a copy of the Conduct Reports that are responsive to your request or informed you of your ability to access the records via your facility packet, it is my opinion that the PCF did not violate the APRA.

The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose its investigatory records. An investigatory record is "information compiled in the course of the investigation of a crime." *See* I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records.

See Opinion of the Public Access Counselor 09-FC-157. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* The PCF would have discretion to grant or deny your request for investigatory records pursuant to I.C. § 5-14-3-4(b)(1); thus it is my opinion that it did not violate the APRA in denying your request for documents pertaining to Ms. Williams attempt to traffic at the PCF on June 18, 2011.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage
Public Access Counselor

cc: David W. Barr