



STATE OF INDIANA

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February 24, 2012

Mr. Larry T. Outlaw
5501 S. 1100 W.
Westville, Indiana 46391

Re: Formal Complaint 12-FC-46; Alleged Violation of the Access to Public Records Act by the Westville Correctional Facility

Dear Mr. Outlaw:

This advisory opinion is in response to your formal complaint alleging the Westville Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John Schrader, Litigation Liaison, responded on behalf of the Facility. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Facility for copies of the names, job titles, hiring dates, and photos for certain Facility Staff. In response to your request, Mr. Schrader provided that the Facility does not have any existing documents titled "WCC Administrative Staff Officials", "WCC Custody Staff Officials", or "WCC Room Staff Officials" that consists of Names, Job Titles, Dates of Hire, and photographs. You allege that the Facility may not charge a fee under the APRA to inspect a public record or to search for, examine, or review a record to determine whether the record may be an existing document.

In response to your formal complaint, Mr. Schrader advised that the Facility does not have an existing record entitled "WCC Administrative Staff Officials", "WCC Custody Staff Officials", or "WCC Mail Room Staff Officials". Further, the Facility does not delineate specific staff members as just "Administrative Staff Officials", "WCC Custody Staff Officials", or "Mail Room Staff Officials". Any request for a snap shot of any employee would be considered personal information. In light of safety and confidentiality concerns with allowing offenders to have access to personal information for Facility staff, the Facility will not provide such information.

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 Facility 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 Facility’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 24 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 (7) 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 Facility responded to your request within the timeframes provided in section 9(b) of the APRA.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; 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.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, the Facility has indicated that it does not maintain any records or lists that were responsive to your generalized requests. As such, it is my opinion that it did not violate the APRA.

I am not able to discern from your complaint how the Facility allegedly violated the APRA regarding copying fees. The Facility provided in its original response that it did not maintain any records that were responsive to your request and did not allude in any manner to any fees that would be required prior to the production of any records. As you have not made a cognizant allegation or argument specifically regarding an agency’s responsibilities under I.C. § 5-14-3-8, I will not address the issue in this advisory opinion.

The APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA’s disclosure requirements, except for:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees with the request being particularized by employee name. I.C. § 5-14-3-4(b)(8).

Here, the Facility properly denied your generalized requests for personnel information for nondescript groups of employees. As such, it is my opinion that the Facility did not violate the APRA.

CONCLUSION

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

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: John Schrader