



# STATE OF INDIANA

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May 20, 2014

Mr. Benjamin P. Woody #10011  
Pendleton Correctional Facility  
4490 W. Reformatory Rd.  
Pendleton, IN 46064

*Re: Formal Complaint 14-FC-84; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility*

Dear Mr. Woody,

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Facility has responded via Mr. Neil Potter. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 17, 2014.

## BACKGROUND

Your complaint dated April 17, 2014, alleges the Pendleton Correctional Facility violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On February 23, 2014, you and another inmate fell down the "J-CH Steps" at the Pendleton Correctional Facility. In March 2014, you then requested from the Facility certain records relating to circumstances surrounding the fall. Your initial request was denied by Neil Potter, Administrative Assistant, because the request was not written on the proper form. You then resubmitted your request on the proper form on March 15, 2014.

Your request specified a number of records from the Facility relating to the construction of the staircase and a surveillance video capturing the time period 5:45 a.m., through 9:15 a.m., on February 23, 2014 (the day of your fall).

With regard to the video, you requested both to view the video yourself, or that Mr. Potter or a representative view the video and provide you with a report of the events.

With regard to the construction of the staircase, you requested a report by Mr. Gipson approving the construction of the stair case, the full name and address of the agency by which Mr. Gipson is employed and the dimensions of the staircase.

Your request was acknowledged in a timely manner on March 19, 2014, and then on March 28, 2014, Mr. Potter responded in full. With regard to the video, your request for Mr. Potter or a representative to create a report of the events on the video was denied, based on Advisory Opinion 05-FC-262. Your request to view the video was denied based on Ind. Code § 5-14-3-4(b)(10).

You were not provided with a report by Mr. Gipson because no such report existed. Your requests for the full name and address of Mr. Gipson's employer and the dimensions of the staircase were not addressed.

After the filing of your formal complaint the Facility submitted to the Office of the Public Access Counselor both its response and a letter sent to you on March 28, 2014, denying your request. The response reiterated the denial, along with a statement that “[a]ll of the information sought in connection with this portion of offender Woody's APRA Request (to include a record of the dimensions of the J-Cell house steps) was interpreted by [Mr. Potter] (in good faith) to be specifically related to a report thought by offender Woody to have been generated by Mr. Gipson.” Upon receiving your formal complaint, Mr. Potter contacted the Facility Physical Plant Director and determined that no record existed containing the dimensions of the steps.

## **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 Ind. Code § 5-14-3-1. The Pendleton Correctional Facility is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Facility’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Facility has determined no records exist responsive to your public records request other than the surveillance video. In regard to dimensions of the steps in question; Mr. Gipson’s report; or generating a report based on the video, the Facility is not required

under the APRA to create records for the purpose of satisfying a records request. If they do not exist at the time of the request, they are under no obligation to produce them. Similarly, the APRA does not require a public agency to answer questions. The APRA does not contemplate traditional discovery devices such as interrogatories, requests for admission or depositions.

Regarding the surveillance video, I have not been afforded the opportunity to view the footage. Therefore, I cannot make a conclusive determination if the footage would compromise the integrity of the Facility security system pursuant to Ind. Code § 5-14-3-4(b)(10). The better exception to cite would be Ind. Code § 5-14-3-4(b)(23)(B) (records requested by an offender that: concern or could affect the security of a jail or correctional facility). Nonetheless, I cannot make a determination based on that particular exception either. In part, it is the discretion of Department of Correction personnel to make that judgment call.

I would suggest to the Facility to consider what truly is considered information compromising security issues, however, the Office of the Public Access Counselor is not in a position to make that subjective determination.

#### **CONCLUSION**

It is the Opinion of the Public Access Counselor the Pendleton Correctional Facility did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Neil Potter