



STATE OF INDIANA

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August 26, 2026

Re: Complaint 25-FC-358
Jermaine C. Davis (Complainant) v.
Department of Corrections (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed September 25, 2025.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on November 14, 2025, requesting a formal response by December 16, 2025. A formal response, submitted by Chief Legal Officer Anna Quick on behalf of Respondent, was received by this office on December 15, 2025.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by failing to provide the requested records.

ANALYSIS

The public policy of 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.” Indiana Code (IC) 5-14-3-1. Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(s). As a result, unless an exception applies, any person has the right to inspect and copy Respondent’s public records during regular business hours. IC 5-14-3-3(a).

Complainant filed two (2) Access to Public Records (APRA) requests, the first on July 3, 2025, and the second on July 21, 2025, seeking:

- 1) A request for work orders to repair a loose shelf in the Complainants cell.
- 2) A copy of the incident report where the Complainant was struck by the shelf when it collapsed.

Complainant states that the record request was acknowledged but no copies of records were ever received. Complainant states that at the time of filing of the complaint no denial of producing the records was received.

In a copy of the documents attached to the complaint, the Respondent did on July 21, 2025, acknowledged the July 21, 2025, request and immediately denied the request for the incident report, citing the confidential nature of the incident report as the basis for the denial.

APRA provides that confidential records are excepted from disclosure:

IC 5-14-3-4 Records and recordings exempted from disclosure; time limitations; destruction of records

(a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those 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.

In the formal response, Respondent asserts that the incident reports are confidential under rules adopted by the Respondent at 210 IAC 1-6-2(3)(E), which reads:

210 IAC 1-6-2 Classification of information

The department shall collect, maintain, and use only that offender or juvenile personal information that is relevant and necessary to accomplish the statutory purposes of the agency. All offender or juvenile information collected and retained by the department shall be classified in the following manner:

(3) Confidential information shall include, but is not limited to, the following:

(A) Offender diagnostic/classification reports.

(B) Criminal intelligence information.

(C) Information that, if disclosed, might result in physical harm to that person or other persons.

(D) Information obtained upon promise of confidentiality.

(E) Internal investigation information.

(F) All juvenile records.

(G) Any other information required by law or promulgated rule to be maintained as confidential.

Respondent informed Complainant on July 21, 2025, by memorandum that the incident report would not be released pursuant to the above referenced administrative code. This office confirmed with Respondent that no other provision provided for the inmate to have access to an incident report in which they were involved.

Respondent on December 10, 2025, responded to Complainant's July 3, 2025, APRA request again by memorandum. Respondent stated that it did not have a copy of the work order for the shelf. Respondent in its formal response elaborated on its work order system and discussed the change over of work order systems in March of 2025. Complainant filed the work order in the previous system. The Respondent stated that the new system did not capture the prior work orders, and therefore, the system did not have the record Complainant requested on July 3, 2025.

While it seems that Respondent did have the work orders in the system prior to the change over, Respondent apparently lost access to the work orders in March of 2025, before Complainant requested a copy on July 3, 2025. It has long been a position of this office that a public agency cannot produce records it does not have or do not exist. *Opinions of the Public Access Counselor 26-FC-035 and 25-FC-276.*

Even if a thorough search was completed, the timeframe from the request on or about July 3, 2025, until the time Complainant was notified that they do not have the record on December 10, 2025, of six (6) months is not reasonable.

CONCLUSION

This office finds that the Respondent did not violate APRA by failing to provide the records of the incident report, which is confidential by Indiana Administrative Code. However, Respondent violated APRA when it took an unreasonable amount of time, approximately six months, to respond to Complainant's request concerning the work order.



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