



STATE OF INDIANA

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May 28, 2009

Jamie Dickerson
1123 South Jefferson Street
Muncie, Indiana 47302

Re: Formal Complaint 09-FC-120; Alleged Violation of the Access to Public Records Act by Delaware County Community Corrections

Dear Ms. Dickerson:

This advisory opinion is in response to your formal complaint alleging Delaware County Community Corrections ("DCCC") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of DCCC's response to the complaint is enclosed. In my opinion DCCC initially violated the APRA by denying you access to records but has now remedied that violation.

BACKGROUND

You filed a complaint with this office, postmarked on May 4, 2009 and received by my office on May 6, wherein you allege DCCC denied you access to records. You allege on April 21, 22 and 23 you requested access to records maintained by DCCC. You further allege that on each of those dates you were denied access to the records. The clerks who denied access indicated all records maintained by DCCC are confidential pursuant to federal law. You finally spoke with Executive Director June Kramer who researched the issue and then provided you with the requested information.

DCCC responded to the complaint by electronic mail message dated May 14 from Ms. Kramer. Ms. Kramer does not disagree with your account of the facts and indicates she was out of the office when you initially submitted your request. Ms. Kramer indicates that some records maintained by DCCC are required to be kept confidential. Ms. Kramer indicates that pursuant to the APRA, DCCC will in the future provide a form by which requestors may ask for access to records maintained by the Department.

ANALYSIS

The public policy of the APRA states, "(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. DCCC is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of DCCC during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, DCCC denied your request on the basis that the records are required to be kept confidential by federal law. While the APRA does require an agency to withhold from disclosure any records required by federal law to be kept confidential (*See* I.C. § 5-14-3-4(a)(3)), I see no evidence that the entirety of the records maintained by DCCC are records required to be kept confidential by federal law. Further, once Ms. Kramer researched the issue, she learned the records you requested were indeed required to be disclosed. Based on these facts, it is my opinion that when the office initially denied you access, it did so in violation of the APRA. I understand that Ms. Kramer has now provided you with the requested records and as such remedied the violation.

Ms. Kramer further indicates that in the future DCCC will require requests for access to records to be made using a form prescribed by the agency. The APRA does allow an agency to require that requests be made in writing. I.C. § 5-14-3-3(a). The agency may either provide a form or provide a list of the information that must be included in the written request.

CONCLUSION

For the foregoing reasons, it is my opinion DCCC initially violated the APRA by denying you access to records but has now remedied that violation.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: June Kramer, Delaware County Community Corrections