



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 22, 2009

Kevin Pearson
DOC #863448
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 09-FC-16; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Pearson:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. The Department's response to the complaint is enclosed for your reference. It is my opinion the Department's response was untimely but the Department did not otherwise violate the APRA.

BACKGROUND

You allege that you submitted a request for access to records to the Department on November 24, 2008. You allege the Department failed to respond the request.

The Department responded to the complaint by letter dated January 16, 2009. The Department indicates it received the request on or about December 8 and did not provide a response within seven days. The Department has now responded to the request and provided you copies of any records it maintains which are responsive to your request.

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. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department 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).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). 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. I.C. § 5-14-3-9(b).

Here, you submitted your request on November 24. The Department indicates it received the request on or about December 8. The Department further indicates it did not respond to the request within seven days. As such, the Department's response was untimely under the APRA.

The Department indicates it has now responded to your request and has provided you copies of any records it maintains which are responsive to your request. Based on this response to your request, it is my opinion the Department has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Department's response was untimely but the Department did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Robert Bugher, Legal Services Director, Indiana Department of Correction