



STATE OF INDIANA

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August 11, 2009

Michael Hunt
DOC #961894
3038 West 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 09-FC-163; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Hunt:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("Department"), acting through the Miami Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Facility's response to the complaint is enclosed for your reference. It is my opinion the Facility did not violate the APRA.

BACKGROUND

You allege that on June 17, 2009 you requested access to certain electronic mail messages maintained by the Facility. You received a response dated June 22, 2009 from the Facility, wherein the Facility denied you access to the records on the basis of I.C. § 5-14-3-4(b)(23). You filed the present complaint on July 20 (postmarked July 16), alleging the Facility has inappropriately denied you access to the requested records.

The Facility responded to the complaint by letter dated August 5 from Department Staff Attorney Michael Barnes. The Department contends that you are an offender as defined in the APRA and that the Facility appropriately denied you access to the records because the records concern or could affect the security of a correctional facility.

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 Facility 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 the Facility 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).

The APRA provides a number of categories of records which may be disclosed by an agency at the agency's discretion. A listing of such records may be found in I.C. § 5-14-3-4(b). One group of records which may be disclosed at the discretion of the agency is the following:

Records requested by an offender that:

...

(B) concern or could affect the security of a jail or correctional facility.
I.C. § 5-14-3-4(b)(23).

The APRA defines "offender" as "a person confined in a penal institution as the result of the conviction for a crime." I.C. § 5-14-3-2(i). Because you are an offender, the Facility may withhold from disclosure records that "concern or could affect the security" of the Facility. *See* I.C. § 5-14-3-4(b)(23).

Further, regarding denial of access, the APRA provides that when a request is made in writing, an agency may only deny the request if the following conditions are met:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:
 - A. a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
 - B. the name and title or position of the person responsible for the denial.

I.C. § 5-14-3-9(c).

Here, the Facility denied you access to certain electronic mail communications between staff members. The denial was made in writing and included a statement of the exemption claimed as well as the name and title of the person responsible for the denial. Therefore, the denial met the technical requirements of I.C. § 5-14-3-9(c).

The question, then, is whether the Facility could bear the burden of proof to sustain the denial of access on the grounds that disclosure of the records could affect the security of the Facility. If the Facility can do so, the denial is appropriate under the APRA. Here, the Department has not provided an explanation as to why the records are nondisclosable based on the exception listed. While the Facility is not required to provide such an explanation in its denial of access, the Facility (or Department) would be required to do so in a court of law:

(g) If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) [IC 5-14-3-4(b)] of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

(A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and

(B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

I.C. § 5-14-3-9(g).

It is my opinion that the Facility's denial of access was appropriate so long as the Facility can establish the content of the records with adequate specificity to prove the records are excepted from disclosure, if the matter were considered by a court of law.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Michael Barnes, Indiana Department of Correction