



STATE OF INDIANA

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April 8, 2009

Eric Smith
DOC #112675
New Castle Correctional Facility
PO Box A
New Castle, Indiana 47362

Re: Formal Complaints 09-FC-77; Alleged Violation of the Access to Public Records Act by the Indiana Parole Board

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging the Indiana Parole Board ("Board") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Board's response to the complaint is enclosed for your reference. It is my opinion the Board has not violated the APRA.

BACKGROUND

You allege that you requested information regarding the identity of an individual scheduled to testify against clemency at your clemency hearing scheduled for February 5, 2008. The Board denied you access on the basis that the records are confidential pursuant to state statute. You contend the records should be made available. Your complaint was postmarked on March 9, 2009, and my office received it on March 10.

The Board responded to the complaint by letter dated March 11 from Randal Gentry. The Board contends the clemency hearing did not take place and no public testimony was taken. Further, the Board contends I.C. § 11-8-5-2(a)(3) and (4) allows the Board to deny access to the information regarding the identity of the person scheduled to testify. In addition, the Board cites *Duckworth v. Williams*, 494 N.E.2d 368 (Ind. Ct. App. 1984).

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 Board 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 Board 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).

You have requested access to records which would reveal the identity of an individual scheduled to testify in opposition to your petition for clemency. The Board denied access on the basis of I.C. § 11-8-5-2, which provides the following, in part:

The department [of correction] may, under IC 4-22-2, classify as confidential the following personal information maintained on a person who has been committed to the department or who has received correctional services from the department:

...

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

(4) Sources of information obtained only upon a promise of confidentiality.

I.C. § 11-8-5-2(a).

This provision gives the Board the authority to promulgate administrative rules to declare certain records it maintains as confidential. The APRA provides that a public agency may not disclose, unless access is required by state or federal statute or a court order, the following records, among others:

(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.

I.C. § 5-14-3-4(a).

The Department of Correction, which includes the Board, has been granted by I.C. § 11-8-5-2 the authority to classify public records as confidential. The Department has done so via 210 IAC 1-6-2. The administrative rule language mirrors that of I.C. § 11-8-5-2. As such, information which is obtained only on a promise of confidentiality and information which, if disclosed, might result in physical harm to persons are excepted from disclosure. The Board is required to maintain that information as confidential.

A similar issue has been considered by the Indiana Court of Appeals in a case involving petitioners' requests to access confidential information:

The Department's interest in confidentiality is especially great when disclosure of a document could threaten an individual's safety. . . The

Department's interest in maintaining the confidentiality of letters or statements from private citizens protesting the offender's possible release may also be great. *See Avery v. Webb* (1985), Ind.App., 480 N.E.2d 281. *Duckworth v. Williams*, 494 N.E.2d 368, 370-71 (Ind. Ct. App. 1984).

The present issue is similar to that in *Duckworth*. It is my opinion the Board's interest in confidentiality is great here since disclosure of the records could threaten an individual's safety. Based on the statutory requirement for the Board to maintain confidentiality of certain records and on the decision in *Duckworth*, it is my opinion the Board has not violated the APRA by denying you access to the records.

CONCLUSION

For the foregoing reasons, it is my opinion the Board has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Randal Gentry, Indiana Parole Board