

September 15, 2004

Mr. Michael Hunt, #967894
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: Formal Complaint 04-FC-141; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Hunt:

This is in response to your formal complaint alleging that the Indiana Department of Correction ("IDOC") violated the Access to Public Records Act, I.C. 5-14-3 by failing to respond to your request for access to public records. I find that the Indiana Department of Correction's responses to your requests for access to public records did not violate the Access to Public Records Act.

BACKGROUND

You allege that on the below dates, you requested, in writing, the following information from the Indiana Department of Correction:

- 1) July 19, 2004--email and memoranda from Cecil Davis regarding a lockdown at D West Housing Unit, resulting from offender to offender violence, as well as memoranda regarding visitor restriction resulting from the lockdown and notification of that restriction.
- 2) July 26, 2004--email and memoranda from Cecil Davis regarding a lockdown in B Cell House on or around July 10, 2004.
- 3) July 29, 2004--email and memoranda regarding a lockdown in D East, range 200, from July 19-July 26, as well as a copy of the memoranda posted at the Indiana State Prison notifying visitors of the lockdown and a copy memoranda regarding the lockdown that was provided to TV stations.

You filed separate formal complaints alleging that the IDOC failed to respond to each of your three July requests. We received your complaints and forwarded a copy to the IDOC on August 20, 2004. Ms. Pam Pattison, Director of Media and Public Relations, responded on behalf of the IDOC. Ms. Pattison states that the IDOC responded to your July 26, 2004 and July 29, 2004

requests, and she provides a copy of those responses for our review. Ms. Pattison also states that the IDOC did not receive your July 19, 2004 request. I have enclosed her response for your reference. For purposes of this opinion, I address all three of your complaints together.

ANALYSIS

The Indiana Department of Correction is a public agency for purposes of the Access to Public Records Act. A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. I.C. §5-14-3-9(b). A timely response to the request need not include production of the requested documents or expressly decline to produce documents responsive to the request. A public agency may comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production of the requested document.

When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. I.C. §5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b). However, a public agency must first receive a request in order to be responsible for a response under I.C. § 5-14-3-9. *Opinion of the Public Access Counselor 03-FC-25*.

Pam Pattison provided a copy of her responses to your July 26 and July 29 requests. Her responses indicate that your July 26 request was received on July 30, and your July 29 request was received on August 3. She responded to both requests on August 4. As such, both of her responses were within the seven (7) days required by the Access to Public Records Act. Furthermore, both responses indicate the action being taken by the agency toward production of the requested documents by advising you that the requests were being reviewed to determine what records could be disclosed to you. I find that the content and timeliness of the Indiana Department of Correction's response to your July 26 and July 29 requests do not violate the Access to Public Records Act. However, I note that while the IDOC indicates the action being taken toward production, a better response would also indicate a date or a time frame in which the records will be produced or an update on the status of the request will be given.

The IDOC expressly denies receipt of your July 19, 2004 request. While you provide a copy of a record request dated July 19, 2004, there is no evidence establishing that the request was posted by you on that date or that it was subsequently received by the Indiana Department of Correction. Accordingly, I decline to find the IDOC in violation of the Access to Public Records Act for failing to timely respond to your request for records it alleges it never received.

Your complaint indicates that as of August 12, 2004, the date you mailed your complaints, you had not received the records sought in your July 26 and July 29 requests. The APRA does not contain any specific deadline for production of documents. Past opinions of this office have stated that the agency must produce responsive documents within a reasonable time. The factors that must be evaluated when determining reasonableness of the timeliness of production include the number of documents in the request, whether the documents are stored offsite, and whether the documents contain partially disclosable and nondisclosable information. In any case, this office has held that the public agency has the burden of showing that the time for production was reasonable. *Opinion of the Public Access Counselor 00-FC-5*. We have

contacted the IDOC to determine whether the documents you requested have been provided to you or, if not, when they will be. However, as of the time this opinion was written, we had received no response. To the extent that you allege that the production of documents is untimely, and the IDOC has failed to prove otherwise, I would find a violation of the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the content and timeliness of the Indiana Department of Correction's response to your request for documents did not violate the Access to Public Records Act. I do not opine on the timeliness of the Indiana Department of Correction's production of documents, but note that it must produce documents within a reasonable period of time.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Pam Pattison; w/o enclosures