

December 16, 2004

Mr. Robert W. Grass
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: Formal Complaint 04-FC-218; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Grass:

This is in response to your formal complaint alleging that the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") by denying you the right to inspect records. I find that the Pendleton Correctional Facility did not violate APRA when it required that you accept copies of records.

BACKGROUND

On October 20, 2004, you submitted a written request to "inspect or obtain a copy of" the following records to Susan VanHoy, Business Administrator at Pendleton Correctional Facility: (1) The most recent balance sheet for the Pendleton Correctional Facility REC fund; (2) The contract entered between Pendleton Correctional Facility and PEN Products to provide commissary services for offenders at Pendleton Correctional Facility; and (3) A copy of the bank statement for the Pendleton Correctional Facility Recreation Fund.

Davis Barr, Administrative Assistant for the facility responded to you by memorandum on October 22, 2004 acknowledging receipt of your request and stating his intention to review your request. On November 5, 2004, the facility sent you a memorandum stating that the records you requested were available for inspection and copying in the Administrative Building at the facility, and advising you that because you do not have access to the Administration Building, the facility had copied the six pages of documents and would send them to you upon your remittance of \$.60. As well, the facility advised you that there is no contract with PEN Products.

After receiving this memorandum, you filed your formal complaint, which I received on November 18, 2004. You allege that the facility denied you the right to inspect under the APRA, and your right to inspect is a separate right under the APRA. I sent a copy of your complaint to the Indiana Department of Correction, which operates Pendleton Correctional Facility. The written response submitted by Mr. Barr is enclosed for your reference. In his letter, Mr. Barr states that your written request did not limit your request to only inspection. Moreover, he stated that because you are restricted from entering the Administration Building, which is located outside the walled facility, and the facility has a policy that these financial records are available to inspect only within the Administration Building, you are only entitled to copies of the records.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless an exception to disclosure applies. Ind.Code 5-14-3-3(a). Generally, an individual has a right to only inspect a record. However, circumstances may make inspection of a record impractical or impossible. The issue presented in your complaint is whether the facility may deny you the right to inspect records rather than receive copies of the records. This issue has been presented to this office before. In *Opinion of the Public Access Counselor 04-FC-43*, the public access counselor opined that restrictions on the movement of offenders is one circumstance that may make physical inspection of a record impossible. I concur with the opinion in 04-FC-43, and find that the institutional safety and security restrictions authorized by Indiana law and exercised by the facility, while restricting your access to inspect records, is not in violation of the APRA.

I also find that even if the facility could not have restricted your access to inspect the record, your written request did not state that you wished only to inspect the record. You also elected to obtain copies of the record. Therefore, the facility would not have violated the APRA by making copies available to you even if it was required to allow you to inspect the record.

Finally, the facility's insistence on receiving payment of \$.60 for the records is sanctioned by IC 5-14-3-8 (c), which allows a state agency to charge a copying fee of \$.10 per page, and by IC 5-14-3-8(e), which allows an agency to require that the payment for copying cost be made in advance. The copying cost reflects the actual cost of copying the records, and allows the agency to recoup these reasonable costs.

CONCLUSION

For the foregoing reasons, I find that the Pendleton Correctional Facility did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. David Barr