

January 19, 2005

Tyrone Frazier
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 04-FC-233; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Indiana Department of Correction (“Department”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request. I find that the Department did not violate the APRA.

BACKGROUND

You sent to the Indiana Department of Correction’s central office a letter that stated the following questions:

1. Please give me the ratio of the population of African-American inmates compared to Caucasian inmates in the Indiana Department of Correction;
2. When an inmate is illiterate and wants help in the law library or other programs, what provisions are set forth for said inmate?
3. What rights and defense is set in place for an illiterate inmate that needs appeal for a conduct report?

You allege that you received no response to the above questions. Your formal complaint, filed on December 20, 2004, alleges a denial only of the information about the number of African-Americans incarcerated in the Department of Correction versus the number of Caucasians.

Ms. Pam Pattison responded to your complaint, and I enclose for your reference her written response. She stated that the Department is gathering the information that you request, although she believes that your request could have been handled more expeditiously at the facility level. She also believes that your questions do not constitute a request for records under APRA.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided under section 4 of the APRA. Ind.Code 5-14-3-3(a). A request for records must identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). Also, an agency may require that an individual request records in writing or on a form provided by the agency. IC 5-14-3-3(a)(2). If an agency does not have records that are responsive to a request, it does not violate the APRA by failing to produce records it does not maintain. Also, an agency is not required to create a record to respond to a request for information. An agency is not required under the APRA to answer questions, only to provide the requester with the right to inspect and copy public records. *See Office of the Public Access Counselor Advisory Opinion #01-FC-60.*

Under both your complaint and the Department's version of your request, you appeared to be merely seeking answers to questions, not records. The Department has a policy, 00-03-101 that states that requests for records be submitted on a form specifically provided for that purpose. Under these circumstances, it would not seem to be a violation of the Access to Public Records Act for the Department to have treated your request as an informational request rather than one for records. Also, your request may not have been stated with reasonable particularity, although the Department would have been obligated to contact you to determine what specific records you were seeking.

CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Correction did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Indiana Department of Correction