

August 2, 2006

Clyde Piggie
#933944
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: Formal Complaint 06-FC-113; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Piggie:

This is in response to your formal complaint alleging that the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act by failing to allow you to inspect records at your option. I find that the Facility has not violated the Access to Public Records Act.

BACKGROUND

Your June 20, 2006 request to the Facility to inspect, not copy, certain public records was met with the Facility's determination that because you cannot visit the Administration Building of the Facility, your request to inspect records prior to receiving a copy is denied. You filed a formal complaint with the Office of the Public Access Counselor, seeking a ruling of this office regarding your right to merely inspect, not copy, public records.

I sent a copy of your formal complaint to the Facility. I received a response from David Barr, Administrative Assistant. I have enclosed a copy of his response for your reference. Mr. Barr acknowledged that your access to the Administration Building is restricted, but he challenges your assertion that the Facility has violated the Access to Public Records Act where the Facility has told you that it would furnish copies of any of its disclosable public records for a \$.10 per page copying fee.

ANALYSIS

You have complained that you were not provided with the opportunity to inspect the records prior to obtaining a copy of the records. The public policy of the APRA states that "(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." Ind. Code § 5-14-3-1. Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). The Facility is a public agency under the APRA. IC 5-14-3-2(1)(1). 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 Indiana Code section 5-14-3-4. IC 5-14-3-3(a).

However, the APRA is a statute of general applicability, which means the APRA governs unless some other more specific statute addresses the issue. Therefore, the question here is whether there is some other statute that governs your right to inspect the records in the Administration Building of the Facility. It is my opinion that another statute does govern your ability to access the Administration Building of the facility and therefore its records. Indiana Code section 11-11-6-1 provides in relevant part that "[t]he department [of correction] shall adopt policies and procedures for the protection of committed persons, including the monitoring of committed persons whose presence in the general population of a facility or program constitutes a threat of physical danger to other persons." It is my opinion that Indiana Code section 11-11-6-1 allows the facility to restrict an offender's access to areas of the Facility, even those areas where public records are maintained.

Further, the APRA does not require the Facility to transfer records to a more convenient or accessible location in order to provide an opportunity for you to inspect the records. Therefore, it is my opinion that the Facility did not violate the APRA by prohibiting you from entering the Administration Building for the purpose of inspecting public records. Likewise, the Facility was not required to make other arrangements for you to inspect the records.

In addition, the Facility may charge a copying fee of \$.10 per page for copies of public records. IC 5-14-3-8(c). The Facility may require that payment for copying costs be made in advance. IC 5-14-3-8(e). If you believe that as an indigent person you should not be assessed a copying fee, you must petition a court of competent jurisdiction to determine that you are indigent for purposes of the Access to Public Records Act.

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: David W. Barr