



STATE OF INDIANA

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September 30, 2009

Mr. Bryan T. Runick, DOC # 923668
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 09-FC-197; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Runick:

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("PCF") violated the Access to Public Records Act ("APRA"), Ind. Code §5-14-3-1 *et seq.*, when it refused to produce records regarding an incident at the facility. For the following reasons, my opinion is that PCF violated the APRA insofar as its response to your request did not satisfy the procedural requirements of the APRA, but PCF's denial did not otherwise violate the APRA because the records you sought are exempt from disclosure under the Indiana Department of Correction's administrative rules.

BACKGROUND

In your complaint, you allege that you were injured at PCF on October 6, 2008. PCF took photographs and created an incident report in the course of investigating the injury. On October 7, 2008, you filed a grievance with PCF seeking these records. In response, PCF informed you that you needed to file a Request for Access to Public Record form. On July 30, 2009, you submitted the Request form. On August 20, 2009, PCF issued a written denial of your request, citing the facility's regulations regarding investigation of tort claims and generally to I.C. §5-14-3-4.

PCF's response to your complaint is enclosed for your reference. In it, Legal Services Director Robert Bugher argues that, to the extent any of your requested records exist, they were compiled in the course of a facility investigation and are, therefore, exempt from disclosure under 210 Ind. Admin. Code 1-6-2(3)(E).

ANALYSIS

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.” I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a). PCF is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of PCF during regular business hours unless the public records are exempt under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, PCF failed to respond to your written request within the required seven (7) days in violation of the APRA. Moreover, in its initial response to your request, PCF cited generally to section 4 of the APRA, which contains the list of exemptions to disclosure of public records. That response was not sufficient to satisfy PCF’s response requirements under the APRA because PCF failed to cite the *specific* exemption authorizing the withholding of the public record. I.C. §5-14-3-9(c).

As to the substance of your records request, an agency must not disclose a record 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)(2). Under I.C. § 11-8-5-2(a), the Indiana Department of Correction (“DOC”) may classify as confidential information maintained on a person who has been committed to the department. Pursuant to this authority, the DOC has classified as confidential “internal investigation information.” 210 I.A.C. 1-6-2(3)(E). Because PCF compiled the requested records in the course of an internal investigation, PCF did not violate the APRA in denying your request.

CONCLUSION

For the foregoing reasons, it is my opinion that PCF did not violate the APRA when it denied you access to internal investigation information. However, PCF violated the APRA insofar as it failed to respond to your request within seven (7) days and did not cite to the specific statutory exemption authorizing PCF’s denial of your request.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Robert Bugher, Indiana Department of Correction