



STATE OF INDIANA

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October 2, 2009

Mr. Gary Otto
P.O. Box-600
Pendleton, IN 46064

Re: Formal Complaint 09-FC-200; Alleged Violation of the Access to Public Records Act by the Correctional Industrial Facility

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Correctional Industrial Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, my opinion is that the Facility violated the APRA by failing to produce the documents you requested, but has now produced the responsive records.

BACKGROUND

According to your complaint, on August 24, 2009, you filed a written request for access to records regarding your incoming mail at the Facility. You allege that as of September 2, 2009, the Facility had neither given you your requested records nor a written denial of your request.

My office forwarded a copy of your complaint to the Facility. Mr. Tim Horan, Executive Assistant for the Facility, responded by saying that he hand delivered the responsive documents to you on September 4, 2009.

ANALYSIS

The public policy of the APRA states, "[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. The Facility does not dispute that it is 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 the Facility 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).

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, the Facility failed to respond to your written request within the required seven (7) days in violation of the APRA.

I understand that all responsive documents have now been produced to you. I encourage the Facility to be cognizant of the APRA's requirements regarding timely responses to public records requests in the future.

CONCLUSION

For the foregoing reasons, it is my opinion that the Facility violated the APRA by failing to respond to your written request within seven (7) days. The Facility has now produced all responsive records.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial "A".

Andrew J. Kossack
Public Access Counselor

Cc: Tim Horan, Correctional Industrial Facility