



STATE OF INDIANA

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October 9, 2009

Mr. Jocco D. Bailey, DOC # 873649
Indiana State Prison
One Park Row
Michigan City, IN 46361

Re: Formal Complaint 09-FC-204; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Bailey:

This advisory opinion is in response to your formal complaint alleging the Indiana State Prison ("Prison") 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 Prison did not violate the APRA.

BACKGROUND

According to your complaint, you were stabbed at the Prison on May 27, 2009. Thereafter, you submitted a written request for records related to that incident. Specifically, you requested the following records: (1) photographs of your stab injuries; (2) photograph(s) of the weapon used in the incident; and (3) the conduct report of the inmate who confessed to stabbing you. You allege that all of these records are non-confidential and available in Internal Affairs' case file # 07-ISP-0158.

My office forwarded a copy of your complaint to the Prison. Mr. Robert D. Bugher, Legal Services Director for the Indiana Department of Correction, responded on behalf of the prison. His response is enclosed for your reference. Mr. Bugher states that the photographs you requested were included in an internal investigation of the stabbing incident and are confidential, citing the exemption for "internal investigative information" under 210 Ind. Admin. Code 1-6-2(3)(E). As far as the conduct report, Mr. Bugher claims that it constitutes an offender's disciplinary record, which is classified as restricted and may not be released in the absence of a court order or appropriate release signed by the affected person.

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 Prison 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 Prison during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The Prison also does not dispute that the records you have requested are public records. Rather, the Prison argues that the records are exempt from disclosure due to the Prison’s administrative rules. The APRA states that a public agency “may not” disclose records “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 (“IDC”) may classify as confidential information maintained on a person who has been committed to the department. Pursuant to this authority, the IDC has classified several categories of documents as “confidential information,” including information relating to internal investigation information. 210 I.A.C. 1-6-2(3)(E). The Prison cited this exemption when it rejected your request.

Based on the descriptions of the records you requested, it is my opinion that the exemption cited by the Prison is applicable and, therefore, the Prison did not violate the APRA when it denied your request. *See also Opinion of the Public Access Counselor 05-FC-40* (Davis, K., advising that correctional facility did not violate the APRA by denying a request for records regarding internal investigation information).

CONCLUSION

For the foregoing reasons, it is my opinion that the Prison did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Robert D. Bugher, Indiana Department of Correction