



STATE OF INDIANA

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October 19, 2009

Mr. Joseph Williams-El
DOC# 910763
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 09-FC-210; Alleged Violation of the Access to Public Records Act by the Indiana State Prison

Dear Mr. Williams-El:

This advisory opinion is in response to your formal complaint alleging the Indiana State Prison ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code §5-14-3-1 *et seq.*, when it failed to produce a religious charter, which you claim is a public record. For the following reasons, my opinion is that ISP did not violate the APRA because the ISP does not possess the Charter; it is possessed by another prisoner.

BACKGROUND

In your complaint, you allege that you requested a copy of a religious charter issued to the ISP by Grand Sheik Clifford Jackson - BEY. You state that you advised the ISP chaplain that the charter was in the possession of another offender who displays it every Friday. You claim that the charter should not be removed from the chaplain services center because it is a public record.

My office forwarded a copy of your complaint to ISP for a response. ISP Legal Services Director Robert Bugher's response is enclosed for your reference. In it, Mr. Bugher states that the charter is not a public record because it is possessed by another inmate and not by the ISP.

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). The ISP 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 the ISP during regular business hours unless the public records are exempt under the APRA. I.C. §5-14-3-3(a).

ISP claims that it does not maintain the charter and that it is possessed by another inmate. The APRA governs access to public records that are maintained by a public agency; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA. *See Opinion of the Public Access Counselor 09-FC-35*. Based on the information before me, it is my opinion that ISP did not violate the APRA when it failed to produce the document you requested because ISP does not possess such a record.

CONCLUSION

For the foregoing reasons, it is my opinion that the ISP did not violate the APRA by denying you access to records that ISP does not maintain.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Robert D. Bugher, Indiana Department of Correction