



STATE OF INDIANA

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November 16, 2009

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

Re: Formal Complaint 09-FC-241; 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.*

BACKGROUND

In your complaint, you allege that the ISP's religious services center issued a memorandum "mandating all Moorish American's [sic] to be excluded from the 'Eid-ul-Fita' (Feast)." You state that you requested a copy of that memo on September 22, 2009 but your request was returned to you in the institutional mail with no response two days later. My office forwarded a copy of your complaint to the ISP. To date, we have not received a response regarding your allegations.

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 ISP 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 ISP 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).

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. When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

It is unclear whether or not ISP received your request. If the ISP received it but did not respond in writing within seven (7) days, it is deemed denied under section 9 of the APRA. In that case, the ISP would have violated the APRA by failing to deny your request in writing and including a specific statutory exception to the APRA that would allow it to withhold the record you requested. In that case, I encourage ISP to either disclose the document to you or cite a specific statutory basis for refusing to do so.

CONCLUSION

For the foregoing reasons, it is my opinion that if the ISP received your request and failed to timely respond with a citation to specific statutory authority for withholding the record, the ISP violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Robert D. Bugher, Indiana Department of Correction