



# STATE OF INDIANA

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December 22, 2009

Donald Lock  
DOC # 13119  
Pendleton Correctional Facility  
4490 W. Reformatory Road  
Pendleton, IN 46064-90010

*Re: Formal Complaint 09-FC-277; Alleged Violation of the Access to  
Public Records Act by the Pendleton Correctional Facility*

Dear Mr. Lock:

This is in response to your formal complaint alleging the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to records. A copy of the Facility's response to your complaint is enclosed for your reference. It is my opinion that the Facility did not violate the APRA.

## BACKGROUND

In your complaint, you allege that the Facility violated the APRA when it denied you access to "ACA Standards & Guidelines that the [Facility] follow . . . for all handicap/disabled [sic] prisoners under its physical care" (the "Guidelines"). The Facility cited copyright concerns in denying your request for copies of the Guidelines. You allege that the Facility already copies "volumes of copyright [sic] materials as it suits them out of books, magazines, newspapers, etc. etc. so long as it suits their interest."

On behalf of the Facility, David W. Barr responded to your complaint. Mr. Barr maintains that the Guidelines are exempt from disclosure under the APRA pursuant to applicable copyright laws. Mr. Barr claims that the Facility believed that if it had granted your request for copies of the Guidelines, it would have violated copyright laws and subjected itself to litigation. Mr. Barr further states that the Facility did not need to create a record in response to your request. The Facility provided you with the contact information for the publisher of the Guidelines so you can obtain your own copy.

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

An agency may not disclose records declared confidential by state statute or required to be kept confidential by federal law unless access to those records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a)(3). Here, the Facility claims that it cannot release the Guidelines to you without violating applicable copyright laws. If that is indeed the case, it is my opinion that the Facility has not violated the APRA by refusing to provide you with the Guidelines. The Facility bears the burden of proof to sustain its denial of access. *See* I.C. § 5-14-3-1. Here, it is my opinion that the Facility will be able to show that it could not copy the Guidelines for you without violating applicable copyright laws. As such, it is my opinion that the Facility did not violate the APRA by denying your request for copies.

You argue that because the Facility makes copies of other copyrighted material, it should provide you with the copies you seek. You essentially allege that the Facility has violated copyright laws with regard to other materials. This office has no authority to opine on that type of claim. *See* I.C. §§ 5-14-4-3; 5-14-4-10. However, even if I assume the Facility is violating copyright laws with respect to one type of record, that fact would not allow the Facility to violate copyright laws with respect to another record. If the Facility has indeed violated copyright laws with respect to other records, the publisher or author of those records is free to pursue his or her own claim against the Facility for such alleged violations.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Facility can show that applicable copyright laws prohibited the Facility from copying the Guidelines, the Facility did not violate the APRA when it denied your request for copies.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: David W. Barr, Pendleton Correctional Facility