



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 29, 2010

Mr. Jeffery W. Blackmon  
DOC # 935563  
4490 W. Reformatory Rd.  
Pendleton, IN 46064-9001

*Re: Formal Complaint 10-FC-230; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Blackmon:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The DOC's response is enclosed for your reference.

## BACKGROUND

According to your complaint, you hand-delivered a "request for interview" to Pendleton Correctional Facility ("Facility") Counselor Michael Kidder. In that request, you asked to review DOC health care service directives. Mr. Kidder advised you that you would need to pay ten cents (\$0.10) per page. On August 30th, you wrote to Legal Liason David Barr and sought access to either the records themselves or a written denial. On September 2, 2010, Mr. Barr responded in writing to inform you that your request must be on the correct form, which was available in the Facility's library. You object to the form because it is "not a state form," because it contains inaccurate information regarding the Facility's current address, because it does not permit inspection of a public record but requires the payment of copy fees for any record, and because it gives the Facility seven days to respond to a hand-delivered request. You also allege that the Facility requires inmates to request records by using the form, but does not require the media or members of the public to do so.

My office forwarded a copy of your complaints to the DOC. Legal Services Director Robert Bugher responded on behalf of the DOC. Mr. Bugher also enclosed a letter dated September 28, 2010, from Mr. Barr to you in which Mr. Barr responded to many of the above allegations. Specifically, Mr. Barr notes that although the request form is not a "state form," it was created pursuant to the APRA and previous public

access counselor opinions have not deemed it illegal. He acknowledges the incorrect Facility address on the form, but argues that such error is harmless and does not inhibit a requester's ability to obtain or inspect records by using the form. With respect to your allegations regarding the response time and fees listed on the form, Mr. Barr asserts that no such form can contemplate all of the APRA issues that might arise as a result of a request, but that records maintained in the Facility's library are available for inspection at no cost. He adds that you may check out the records you requested from the library for one week at no cost, and that any fees charged to inmates for requests are strictly for copies rather than inspections. With regard to the fact that Counselor Kidder informed you that there would be a copy fee associated with your request, Mr. Barr states that Counselor Kidder is not the appropriate person from whom to request public records as he is not familiar with the appropriate procedures. If you had originally submitted your request on the appropriate form, you would have received a timely and appropriate response.

## 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." Ind. Code § 5-14-3-1. The DOC 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 DOC's public records 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).

In my opinion, the DOC's actions here do not indicate a denial of access. Under the APRA, an agency may require that public access requests are submitted in a particular form: "A request for inspection or copying must: (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing on or in a form provided by the agency." I.C. § 5-14-3-3(a). The APRA does not explicitly outline what an agency may or may not include on a public records request form, but it is clear that "[n]o request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute." *Id.* The APRA further provides that a public agency "may not deny or interfere with the exercise of the right [to inspect and copy public records] stated in subsection (a)." I.C. § 5-14-3-3(b). There is no requirement in the APRA that the form be a "state form." Although the DOC's form mentions copy fees for providing copies of records, there is no evidence that the form denied or interfered with your APRA rights. DOC notes that you did not submit your request on the appropriate form or through the usual channels for submitting requests to the Facility and DOC. Once Mr. Barr received your request, he sent you a detailed response and informed you about how to obtain the records you sought at no charge. Mr. Barr's September 28th response to you complied with the APRA procedurally by responding in a timely manner and substantively by

granting your request and informing you of how to procure the records you sought. Consequently, the DOC did not violate the APRA.

#### CONCLUSION

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

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