



# 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)

November 19, 2010

Mr. Larry T. Outlaw  
4490 W. Reformatory Rd.  
Pendleton, IN 46064

*Re: Formal Complaint 10-FC-252; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility*

Dear Mr. Outlaw:

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("PCF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of PCF's response to your complaint is enclosed.

## BACKGROUND

In your complaint, you allege that PCF denied your request for access to records listing the "entire staff at PCF..." PCF responded to your request by informing you that it maintains no list responsive to your request, PCF's Human Resource Department does not have any such list, and PCF was not required to create one.

In response to your complaint, PCF Administrative Assistance David Barr maintains PCF's position that it has no records responsive to your request. He argues that PCF is not obligated to create such a record to satisfy your request.

## 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. PCF concedes that it is a "public agency" under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy PCF's public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Nothing in the APRA requires a public agency to answer general questions or to create records in response to a request. *Op. of the Public Access Counselor 10-FC-86*. “[T]he APRA governs access to the public records of a public agency that exist; 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.” *Op. of the Public Access Counselor 01-FC-61*; *see also 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”). Consequently, it is my opinion that PCF did not violate the APRA by failing to produce to you records that it does not have.

#### CONCLUSION

For the foregoing reasons, it is my opinion that PCF 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 style with a large, stylized initial "A".

Andrew J. Kossack  
Public Access Counselor

Cc: David W. Barr