



STATE OF INDIANA

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November 29, 2010

Mr. Michael J. Shepard
DOC # 181080
Putnamville Correctional Facility
1946 W. U.S. Hwy. 40
Greencastle, IN 46135

Re: Formal Complaint 10-FC-269; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Shepard:

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"), I.C. § 5-14-3-1 *et seq.* The DOC's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that DOC violated the APRA by denying your request for a copy of an incident report (the "Report") regarding Complaint No. 10-ISF-080, which you filed on October 13, 2010, under the Prison Rape Elimination Act ("PREA"). You argue that the Report should be available to you under the APRA and DOC Executive Directives 00-01-103 and 02-01-115.

In response to your complaint, DOC Chief Counsel Robert Bugher acknowledges that you contacted the Internal Affairs Department at the Putnamville Correctional Facility in October of 2010. Facility Investigator Quentin Storm interviewed you, and you reported an alleged incident that occurred while you were held at the Vanderburgh County Jail. Because it occurred at a county jail rather than a DOC facility, no incident report was created by DOC. As a result, the DOC maintains no documents responsive to your request. However, Mr. Bugher notes that it is his understanding that the Vanderburgh County Jail fully investigated 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 DOC does not contest 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 the DOC’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).

Here, DOC avers that it maintains no records responsive to your request. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[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.” *Opinion of the Public Access Counselor 01-FC-61*. Moreover, nothing in the APRA requires a public agency to create a new record in order to satisfy a request. *See Opinion of the Public Access Counselor 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 DOC did not violate the APRA.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Robert D. Bugher