



STATE OF INDIANA

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March 9, 2010

Mr. Lakesha Norington a/k/a Shawntrell Norington
DOC # 138726
Pendleton Correctional Facility
4490 Reformatory Road
Pendleton, IN 46064

*Re: Formal Complaint 10-FC-33; Alleged Violation of the Access to
Public Records Act by the Pendleton Correctional Facility*

Dear Mr. Norington:

This advisory opinion is in response to your formal complaint alleging that the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The Facility's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Facility violated the APRA by denying you access to medical records, records of Aramark (a contractor operating at the Facility), documents detailing the contract between the Indiana Department of Correction ("IDOC") and Aramark, and all documents showing what is sent by you to Aramark regarding your medically prescribed diet.

In response to your complaint, David W. Barr, administrative assistant for the Facility, argues that the Facility does not maintain many of the records you requested and argues that it is under no obligation to create records to satisfy your request. Mr. Barr further notes that contracts are not negotiated at the facility level, but by IDOC's central office to encompass all facilities throughout the State. The Facility does not have copies of the central office's records. Moreover, Aramark is a third-party contractor and the Facility does not have access to its records. Mr. Barr also argues that the Facility is not under any obligation to provide you copies at the Facility's expense. Finally, it is my understanding that the Facility has not denied you access to your medical records.

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 Facility does not dispute that it is a public agency subject to the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the Facility’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).

With regard to the disputed records in this matter, the Facility argues that because it does not maintain the records you requested, it is under no obligation to produce them. Previous public access counselors have repeatedly opined that 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*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). The APRA does not obligate an agency to create new records in response to a request.

With regard to the issue of copy fees, the APRA permits a public agency to charge a fee for copies of public records. I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copying fee in advance. IC 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. See *Opinion of the Public Access Counselor 07-FC-124*.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: David W. Barr