



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

April 5, 2010

Mr. David R. Neal
DOC # 110281

*Re: Formal Complaint 10-FC-61; Alleged Violation of the Access to
Public Records Act by the Miami Correctional Facility*

Dear Mr. Neal:

This advisory opinion is in response to your formal complaint alleging the Miami Correctional Facility (the "Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I have enclosed the Facility's response.

BACKGROUND

According to your complaint, you requested the names and rank and position of all of the Facility's correctional officers. You also sought photographs, names, and positions of all medical services staff who work at the Facility along with their licenses. You believe that you are entitled to this information "per Indiana Code's" [sic].

In response to your complaint, Staff Attorney Michael Barnes notes that you are an "offender" for the purposes of Ind. Code. § 5-14-3-2(i). As such, the Facility has discretion to withhold records that "contain personal information relating to . . . a correctional officer" under Ind. Code § 5-14-3-4(b)(23)(A)(i). Mr. Barnes also argues that the Facility could have denied your request because it was a blanket request that did not specify the staff by name.

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 meets the definition of a "public agency" under 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 public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

It is my understanding based on the Facility's assertion and based on your mailing address that you are confined in a penal institution as the result of the conviction for a crime. As such, you are an "offender" for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure for information related to employees of correctional facilities, specifically excepting the following:

Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) the victim of a crime; or

(iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23). Thus, to the extent you are requesting personal information relating to a correctional officer or family member of a correctional officer or records that concern or could affect the Facility's security, the Facility acts within its discretion when it denies access to such records. The Facility bears the burden of proof to sustain the denial. *See* I.C. § 5-14-3-1. In my opinion, the Facility will be able to bear that burden.

Moreover, the APRA provides a discretionary exception to disclosure for most personnel file information. While certain personnel file information must be disclosed, the exception provides that the subdivision requiring such disclosure "does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name." I.C. § 5-14-3-4(b)(8). In other words, the Facility is not required to provide you with the requested information because you have requested the information generally on employees without listing any employee's name. *See Opinion of the Public Access Counselor 04-FC-98.*

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: Michael J. Barnes