



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

May 13, 2010

Mr. Tracey L. Wheeler
4490 W. Reformatory Road
Pendleton, IN 46064

Re: *Formal Complaint 10-FC-94: Alleged Violation of the Access to Public Records Act by the Vigo County Jail*

Dear Mr. Wheeler:

This advisory opinion is in response to your formal complaint alleging the Vigo County Jail ("the Jail") violated the Access to Public Records Act ("APRA"), Ind. Code §5-14-3-1 *et. Seq.*

BACKGROUND

In your complaint, you allege that you requested copies of incident reports from "injuries that accrued [sic] on 6-24-2008 regarding myself, and also the names of the nurses on duty that date and the full names of c/o Childress, c/o Ms. Marvel and Jail Commander Myers." As of the date of your complaint, you had not received the information. My office forwarded a copy of your complaint to the Jail. As of today, we have not received a 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." I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during the regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The Jail does not contest that it 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 public records of the Jail during the regular business hours unless the public records are exempt under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, if the Jail failed to respond to your written request within the required seven (7) days, it violated the APRA.

As to the substance of your records request, I note that an agency cannot disclose a record declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute. I.C. §5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), the Indiana Department of Correction (“DOC”) may classify as confidential information maintained on a person who has been committed to the department. Pursuant to this authority, the DOC has classified as confidential “internal investigation information” among other things. 210 I.A.C. 1-6-2-3(E). Moreover, it is my understanding 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 required 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

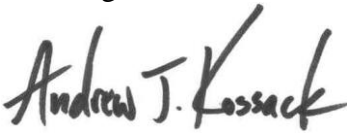
(B) concern or could affect the security of a jail or correctional facility.

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 Jail acts within its discretion when it denies access to such records. The Jail bears the burden of proof to sustain the denial. *See* I.C. § 5-14-3-1.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Jail did not respond to your request within seven (7) days, it violated the APRA. Further, if the Jail cannot sustain its burden of proof to sustain its denial of access to the requested records, it should disclose the records to you. I do not have sufficient information to make the latter determination.

Best Regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, prominent initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Commander Myers