



STATE OF INDIANA

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April 18, 2011

Mr. Rocky M. Shroyer
DOC # 956193
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Consolidated Formal Complaints 11-FC-101, 11-FC-102, 11-FC-103; Alleged Violations of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaints alleging the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Due to the similarity of the issues presented in each of the three aforementioned complaints, I have consolidated them into this single advisory opinion. The Facility's response is enclosed for your reference.

BACKGROUND

In your complaints, you allege that the Facility denied your requests for access to the personnel files of current and former Facility employees and correctional officers. You also asked for investigation records regarding allegations made by your cell mate, and gate closure records and formal charges issued against former employees.

In response to your complaint, Facility Administrative Assistant David Barr states that the Facility denied you access to these requests based on Ind. Code § 5-14-3-4(b)(23) and 210 Ind. Admin Code 1-6-2(3)(E).

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. I.C. § 5-14-3-3(a). The Facility is a public agency under the APRA. I.C. §5-14-3-2(1)(2)(C). If a public agency receives a request in writing, the public agency may only deny the request if the denial is issued in writing and includes the specific exemption or

exemptions authorizing the withholding of the record, and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). A public agency bears the burden of showing that a record is exempt under the APRA. I.C. § 5-14-3-9(f).

Mr. Barr denied your request, in part, based on 210 I.A.C. 1-6-2(E), which classifies as confidential information internal investigation information. The APRA provides that a public agency may not disclose records “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 Department of Correction (“DOC”) DOC may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC has classified several categories of documents as “confidential information,” including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. 210 I.A.C. 1-6-2(3)(A), (C), (E). Therefore, if the documents you requested concerning allegations made by your cell mate constitutes an internal investigation report, as Mr. Barr claims, the DOC did not violate the APRA by denying your request. *See also Opinion of the Public Access Counselor 05-FC-40.*

Moreover, if you are confined to a penal institution as the result of a conviction of a crime, 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 relating to correctional officers and for information that could affect the security of a jail or correctional facility:

- 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, the Facility acts within its discretion to withhold records that could affect the concern of a correctional facility and relate to correctional officers. Consequently, the Facility did not violate the APRA by withholding records on that basis.

That said, Mr. Barr states that you did not request to inspect and copy the personnel records that you list in Complaint No. 11-FC-101.¹ If you had, Mr. Barr would have informed you that you are able to do so between 8:00 a.m. and 4:00 p.m. on business days in the Administrative Building at the Facility. I trust that, upon request, Mr. Barr will permit you to do so.

¹ Out of concern for the security of the Facility’s employees, I have chosen not to identify the names of these individuals in this opinion. Both you and Mr. Barr can refer to his response to confirm those to whom this section refers.

CONCLUSION

For the foregoing reasons, it is my opinion that the Facility 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 prominent, sweeping flourish at the end of the name.

Andrew J. Kossack
Public Access Counselor

cc: David W. Barr