



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

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

July 26, 2011

Mr. Kenneth E. Scott
DOC # 910421
4490 Reformatory Road
Pendleton, Indiana 46064

Re: Consolidated Formal Complaints 11-FC-164 and 11-FC-165; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Scott:

This advisory opinion is in response to your formal complaints alleging the Pendleton Correctional Facility ("PCF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* David W. Barr responded on behalf of the PCF, with his response enclosed for your reference.

BACKGROUND

In Formal Complaint 11-64, you allege that you submitted a written request to review the contract between the Department of Corrections ("DOC") and Aramark, Inc. In Formal Complaint 11-65, you allege that you have attempted since March 2011 to obtain the contact information for the White House, United Nations, Homeland Security Main Office, Aramark's Corporate Office, and the Correctional Medical Services. You state that the request for addresses had been sent to the "counselor's, law library, mail room, superintendent's office, Aramark (at the kitchen), and correction medical services (here at prison)."

On June 15, 2011, Mr. Barr responded to your requests in writing. He provided that the PCF had received your requests and that the office would attempt to respond to them within 14 business days. Mr. Barr noted that if something unusual were to occur that would cause a delay, he would notify you in writing.

On June 27, 2011, Mr. Barr responded that the PCF did not have a copy of the current contract between the DOC and Aramark, Inc. and cited IC 5-14-3 that an agency does not have to generate a document to satisfy a request. He further provided that the DOC's Central Office negotiates contracts for the agency. In regards to the contact

information you had requested, Mr. Barr stated that the contact information for the White House, Homeland Security, and the United Nations could be obtained through the library. He further provided that PCF did not have the contact information for Aramark and Correctional Medical Services and that said information was kept at the DOC's Central Office.

In response to your formal complaint with the Public Access Counselor's office, Mr. Barr responded on behalf of PCF. In regards to 11-FC-164, he noted that PCF did not have a copy of the current contract between Aramark and the DOC and cited IC 5-14-3 that an agency is not required to create a document to satisfy a request. In response to 11-FC-165, Mr. Barr stated that PCF did not maintain contact information for the agencies you requested and under the APRA, an agency was not required to perform a research projects in order to satisfy a public access request. He directed you to the Law Library and the DOC's Central Office, who would be able to assist you in your request.

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. The PCF 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 PCF's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

In regards to 11-FC-164, PCF denied your request for a contract that the facility does not maintain. Generally, 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...."). Mr. Barr states that the DOC's Central Office is the custodian of the contract you requested to review. Accordingly, you should submit your request to that entity rather than the PCF. I trust that the Central Office will either release the record to you or cite an applicable basis under the APRA for denying you access to it.

In regards to 11-FC-165, the PCF denied your request for contact information for the White House, Homeland Security, and the United Nations. As referenced above, 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. The PCF directed you to the law library located at the facility where clerks are available to assist you in your request and help gather the requisite information. In regards to the contact information for Aramark, Inc and Correctional Medical Services, Mr. Barr stated that the DOC's Central Office is the custodian of that information. As with your request pursuant to 11-FC-164, you should

submit your request to the DOC's Central Office, who I again trust will either release the record to you or cite to an exception under the APRA for denying your request.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is written in a cursive style with a large initial "J" and "H".

Joseph B. Hoage
Public Access Counselor

cc: David W. Barr, Pendleton Correctional Facility