



# STATE OF INDIANA

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October 21, 2011

Mr. Gary F. Otto  
5124 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 11-FC-247; Alleged Violation of the Access to Public Records Act by the Correctional Industrial Facility*

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Correctional Industrial Facility ("CIF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* William Goodhart, Librarian, responded to your complaint. His response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on September 9, 2011, you submitted a written request to William Goodhart, the PCIF's Law Library Supervisor, for nine (9) pages of records that you allege were taken from your law library file on September 6, 2011. You further allege that the records were taken from you in response to your filing previous formal complaints with the Public Access Counselor. As of September 21, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have not received any records responsive to your request.

In response to your formal complaint, Mr. Goodhart provided that nine (9) pages of records were recovered by CIF when it was discovered that you fraudulently modified another offender's GED test score notice by removing the individual's name and substituting your own. The nine (9) pages of records were collected and sent to CIF Internal Affairs, as Mr. Goodhart was informed that you were not permitted to have a copy of another offender's test scores. A conduct report was written by CIF which alleged a Class B Offense. A hearing was held on the matter at which time the records at issue were returned to you, minus the modified GED test score notice, which consisted of three (3) pages.

## 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.” *See* I.C. § 5-14-3-1. The CIF is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the CIF’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The APRA provides the right to inspect and copy records of a public agency. It is not clear from your formal complaint whether you are making a request via the APRA, appealing the decision of the Internal Affairs hearing, or alleging that CIF personnel unlawfully took possession of the documents in your law library file. The CIF has provided that all of the documents that are the subject of your formal complaint were returned to you, minus those that you had allegedly modified. While the APRA does not require a requester to specifically invoke the APRA, it is my opinion that after reviewing your request and the CIF’s response, that it was made through means outside the scope of the APRA. *See Opinions of the Public Access Counselor 07-FC-314; 08-FC-234; 11-FC-236.*

Alternatively, I would not that one exception to disclosure under the APRA is for records that are "declared confidential by rule adopted by a public agency under" specific statutory authority to do so. *See* I.C. §5-14-3-4(a)(2). The Department of Correction (“DOC”) has authority under I. C. § 11-8-5-2(a) to promulgate administrative rules to "classify as confidential . . . personal information maintained on a person who has been committed to the department or who has received correctional services from the department." I.C. § 11-8-5-2(b) provides that the DOC may keep confidential information from the offender or other persons unless ordered to disclose (e.g. court order, for research purposes, employees of the DOC if required to perform their duties, etc.).

The DOC has classified certain offender records as confidential pursuant to 210 IAC 1-6-2, which provides that an offender, or his agent's, rights to access confidential or restricted information are set forth at 210 IAC 1-6-4. 210 IAC 1-6-2(2)(a) provides that educational records are restricted information. DOC Policy 01-04-104, which further addresses access to offender records, is based upon the DOC's administrative rules. Educational records are classified as restricted information pursuant to DOC Policy 01-04-104. If the GED test score notice at issue here was the record of another offender, it would be classified as a confidential restricted record pursuant to I.C. § 11-8-5-2(a), 210 IAC 1-5-2(2)(a), and DOC Policy 01-04-104 and the CIF would be allowed to govern your access to it.

CONCLUSION

For the foregoing reasons, the CIF did not violate the APRA.

Best regards,

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

Joseph B. Hoage  
Public Access Counselor

cc: William Goodhart, Donna Carneygee