



STATE OF INDIANA

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March 30, 2011

Mr. David M. Burks-Bey
DOC#: 872875
5501 S. 1100 W.
Westville, IN 46391

Re: Formal Complaint 11-FC-62; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Burks-Bey:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. DOC Legal Services Director Bob Bugher responded on behalf of DOC. Mr. Bugher's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that Rev. Stephen Hall of the DOC denied your written request for Westville Correctional Facility accounting records of inmate trust funds and distributions of profits from said funds to the "WCC Recreation Fund and the M.S.T. of A. Inc. Religious Program."

In response, Mr. Bugher states that Rev. Hall does not maintain the records you seek because such records are kept at each facility rather than at DOC's main office. Mr. Bugher informed you that he requested that officials at Westville Correctional Facility ("WCF") provide you with the relevant records.

You sent additional correspondence to my office dated March 21, 2011, in which you state that you had not yet received the requested information or records.

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 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). DOC is clearly 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 DOC during regular business hours unless the public records are exempt under the APRA. I.C. § 5-14-3-3(a).

As an initial matter, 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...”). Thus, in my opinion Rev. Hall did not violate the APRA by referring you to WCF if he did not maintain the records you requested.

With regard to your statement that you had not yet received records from WCF, the APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

WCF was not notified of your request for its records until, at the earliest, March 1st (the date of Mr. Bugher’s letter to WCF requesting WCF officials to provide you with the records). Moreover, Mr. Bugher’s letter informed you that payment for copy costs would be required prior to releasing the relevant records to you. The APRA permits a public agency to charge a fee for copies of public records. I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copying fee in advance. IC 5-14-3-8(e). It is not clear here whether or not you ever remitted such payment. Consequently, so long as WCF makes the records available to you within a reasonable amount of time after receiving copy fee costs from you, WCF has not violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that DOC 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 large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Robert D. Bugher