



# 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

April 16, 2012

B.A. Corley  
6908 South Old Highway # 41  
Carlisle, Indiana 47838

*Re: Formal Complaint 12-FC-81; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Corley:

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.* Robert Bugher, Chief Counsel, responded on behalf of the DOC. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege you submitted a request for records to the DOC on March 15, 2012. As of March 23, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive a response from the agency.

In response to your formal complaint, Mr. Bugher advised the DOC received your written request on March 23, 2012. The DOC responded in writing on March 23, 2012 and informed you that you did not have sufficient funds in your Offender Trust Account to pay for the respective copy fees.

## 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 DOC 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 DOC'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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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, the DOC received your written request on March 23, 2012 and responded in writing on the same day. As such, the DOC complied with the timelines required by section 9 of the APRA in responding to a written request.

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. The fee for copying documents may not exceed \$.10 per page for copies that are not color copies or \$.25 per page for color copies; or the actual cost to the agency of copying the document. *See* I.C. § 5-14-3-8(d)(1)-(2). A public agency may require a person to pay the copying fee in advance. *See* I.C. 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. In response to your request for records, the DOC informed you that you did not retain sufficient funds in your Offender Trust Account to pay for the respective copying fees. Upon providing the necessary funds, the DOC would be required to provide all records that were responsive to your request, minus any exceptions.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the DOC 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 "H".

Joseph B. Hoage  
Public Access Counselor

cc: Robert Bugher