



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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August 5, 2013

Mr. Michael Hunt  
DOC 961894  
5124 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 13-FC-199; Alleged Violation of the Access to Public Records Act by the Prison Enterprise Network Products*

Dear Mr. Hunt:

This advisory opinion is in response to your formal complaint alleging Prison Enterprise Network Products ("PEN Products"), a division of the Department of Correction ("Department"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to PEN Products on July 10, 2013. PEN Products response was due no later than August 2, 2013. As of today's date, we have yet to receive a response to your formal complaint from PEN Products.

## BACKGROUND

In your formal complaint you provide that you submitted a written request for records to PEN Products on June 27, 2013. As of July 10, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that you have yet to receive any response from PEN Products.

## 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 Department 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 Department'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). 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. 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).

Without the benefit of a response from PEN Products to your formal complaint, it is unclear why your written request for a copy of a hygiene commissary form was denied. As such, it is my opinion that PEN Products violated section 9(c) of the APRA by failing to respond to your written request for records.

#### CONCLUSION

Based on the foregoing reasons, it is my opinion that Pen Products violated section 9(c) of the APRA by failing to respond to your written request for records.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage  
Public Access Counselor

cc: Michael Herron