



STATE OF INDIANA

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August 16, 2013

Mr. Bryant L. Wharton
DOC 891721
727 Moon Road, H3-6L
Plainfield, Indiana 46168

Re: Formal Complaint 13-FC-215; Alleged Violation of the Access to Public Records Act by the Department of Corrections

Dear Mr. Wharton:

This advisory opinion is in response to your formal complaint alleging the Reformative-Residential ReEntry Program (“RRRP”), a division of the Department of Correction (“Department”), violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Carrie Thorman, Program Coordinator, and Toby Foster, Correctional Team Manager, responded on behalf of the RRRP. Their responses are enclosed for your reference.

BACKGROUND

In your formal complaint you provide that you submitted a written request for records to the RRRP on June 11, 2013. As of July 24, 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 the RRRP.

In response to your formal complaint, Ms. Thorman and Mr. Foster advise that the RRRP has no record of receiving your request. Regardless, the information you have requested is now enclosed for your reference.

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).

The Department maintains that it did not receive your request. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. See *Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Department received your request. Under the APRA, if a 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 public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. See I.C. §5-14-3-9(c). If the Department received your request and did not respond to it within these timeframes, the Department acted contrary to the APRA. However, if the Department did not receive your request, it was not obligated to respond to them. Regardless, the Department has now enclosed the information sought in your original alleged request, which I trust to be in satisfaction of your formal complaint.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department did not violate the APRA if it never received your request.

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: Tobias Foster