



STATE OF INDIANA

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September 13, 2013

Mr. Alan J. Kreilein
1000 Van Nuys Rd.
PO Box E
New Castle, IN 47362

Re: Formal Complaint 13-FC-238; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Kreilein,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction, ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. Bob Bugher, Esq., counsel for the Department, responded on behalf of the Department. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 15, 2013.

BACKGROUND

Your complaint alleges that the Department, specifically Commissioner Bruce Lemmon, violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

In a request dated July 30, 2013, you sought from the Indiana Department of Correction a number of contracts between the Department and the GEO Group, Liberty Medical and Corizon. You also requested any documentation regarding the definition of a "crossover" offender.

This request was received by the Commissioner's Office of the Department on August 13, 2013. A file-stamped copy of your original request is attached for your review. On August 12, 2013, you sent this Office a formal complaint seeking an opinion on the non-disclosure of the records. Furthermore, on August 29, 2013, the Department sent a notice to you advising you that the contracts you requested were available after the fee for the copies was remitted. The Department also advised that documentation regarding the definition of a "crossover" offender did not exist.

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 Ind. Code § 5-14-3-1. The Indiana Department of Correction is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 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 (7) days of receipt, the request is deemed denied. See Ind. Code § 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.

Your letter was received by the Department on August 13, 2013. While the Public Access Counselor is not a finder of fact and cannot determine why there was a lag in service, it is presumed that due to your incarcerated status, the request took longer than usual to process and deliver. The response by the Department on August 29, 2013 was subsequently mailed to you. This response was sent to you outside the time limitations pursuant to Ind. Code § 5-14-3-9(c) and is deemed denied. At the time of your formal complaint dated August 12, 2013, your request for public access had not yet been received by the Department. In the meantime, the Department has advised you that the records you seek are available for delivery after payment for the copies is remitted. Ind. Code § 5-14-3-8 allows the Department to charge a fee for those copies. I trust that the notification satisfies your request and renders the timeliness issue of the Department’s response moot for public access purposes. Finally, the Department has notified you in its August 29, 2013 correspondence that the portion of your records request dealing with “crossover” offenders does not exist.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor that the Indiana Department of Correction did not violate the APRA in not responding to your request as of August 12, 2013. It is my presumption that any delay after the date the request was received by the Department has been remedied by their response on August 29, 2013.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

cc: Bob Bugher, Esq.