



STATE OF INDIANA

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October 16, 2013

Mr. Michael R. McGill #119727
Miami Correctional Facility
3038 West 850 South
Bunker Hill, IN 46914

Re: Formal Complaint 13-FC-276; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. McGill,

This advisory opinion is in response to your formal complaint alleging the Department of Correction ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has not responded to your complaint. They were invited to do so on September 16, 2013. 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 September 16, 2013.

BACKGROUND

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

You allege that on or about August 23, 2013 you submitted a request to the Department seeking a list of criteria that is used to determine if a prisoner is to be labeled a predator, aggressor or victim under the Prison Rape Elimination Act ("PREA"). As of September 6, 2013 you had not received any response from the Department. On September 16, 2013 this Office solicited a response from the Department; however, the Department has not responded.

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 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 the request has been received and information regarding how or when the agency intends to comply.

The Department has effectively denied, because this Office has not received a response; therefore, it is unclear if the Department has any records responsive to your request. A public agency is not obligated to create a list or any documentation if it does not exist at the time of the request. Speaking hypothetically, if the list of criteria exists and it is in the custody of the Department of Correction, then they would be in violation of the APRA. As the PREA is a Federal Law, it is likely the Act contains a list of the criteria you are seeking and can be found at PUBLIC LAW 108-79-SEPT. 4, 2003. Unless the Department has created an additional list expanding on the definition, they are likely not the custodian of the list you seek.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Department of Correction has not violated the APRA in denying your request unless they have created a list of criteria that is beyond the scope of the Prison Rape Elimination Act (PREA).

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

cc: Bob Bugher, Esq.