



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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February 15, 2013

Mr. Jesse Anderson
DOC 861361
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 13-FC-48; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Anderson:

This advisory opinion is in response to your formal complaint alleging the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Rich Larsen, Public Information Officer, responded on behalf of the Facility. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a request for records to the Facility for copies of all "photographs, documents, and video related to my stabbing by two other offenders, who are now deceased." You further allege that the Facility improperly denied your request under the APRA.

In response to your formal complaint, Mr. Larsen advised that your request was denied pursuant to 210 I.A.C. 1-6-2(3)(E) and I.C. § 5-14-3-4(b)(23). As you are an offender who is housed at the Facility, you may not receive any internal investigative information that is considered to be confidential. Further, pursuant to 210 I.A.C. 1-6-2(3)(A), (C), (G), you are not entitled to information concerning other offenders and pursuant to I.C. § 5-14-3-4(b)(23), the Facility has discretion to deny your request for records that concern or affect the security of a correctional facility.

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 Facility 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 Facility'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 24 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 (7) 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).

As to the substance of the denial, the Facility denied your request based on 210 I.A.C. 1-6-2(3)(E), which classifies as confidential internal investigation information. The APRA provides that a public agency may not disclose records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” I.C. § 5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), the Department of Corrections (“DOC”) may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC has classified several categories of documents as “confidential information,” including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. 210 I.A.C. 1-6-2(3)(A), (C), (E). Thus, it is my opinion that the Facility did not violate the APRA by denying your request pursuant to 210 I.A.C. 1-6-2(3)(E). *See also Opinions of the Public Access Counselor 05-FC-40; 12-FC-64.*

In addition to 210 I.A.C. 1-6-2(3)(E), it is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure to an “offender” for a record that contains information that would concern or affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
 - (ii) a law enforcement officer (as defined in IC 35-31.5-2-185).
 - (iii) a judge (as defined in IC 33-38-12-3);
 - (iv) the victim of a crime; or
 - (iii) a family member of a correctional officer, law enforcement officer, judge, or the victim of a crime;
- or



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(B) concern or could affect the security of a jail or correctional facility. I.C. § 5-14-3-4(b)(23).

To the extent that the Facility denied your request in light of the affect the disclosure would concern or could affect the security of the Facility, it is my opinion that the Facility did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Facility did not violate the APRA.

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: Rich Larsen