



# STATE OF INDIANA

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October 8, 2014

Ms. Alysia H. Santo  
250 West 57<sup>th</sup> St., Ste. 2514  
New York, NY 10107

*Re: Formal Complaint 14-FC-197 Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana Department of Correction*

Dear Ms. Santo,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The DOC has not responded despite being invited to do so on August 27, 2014. 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 27, 2014.

## BACKGROUND

Your complaint dated August 27, 2014, alleges Indiana Department of Correction violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about July 22, 2014, you sent a public records request to the DOC seeking information associated with sexual violence incidents reported to the federal government pursuant to the Prison Rape Elimination Act. The DOC acknowledged your request on August 4, 2014. You allegedly had a phone conversation with DOC counsel on or about August 27, 2014, wherein you were denied copies of the records for the reason the search yielded a voluminous amount of records and the DOC was short-staffed and did not have the time to retrieve them, copy and send them to you.

Despite the requirement in Ind. Code § 5-14-3-5, which indicates public agencies must comply with this Office regarding complaint investigations, this Office has not received a response from the DOC.

## 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 DOC’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.

First it appears the DOC did not respond to your request within seven days as is required by the APRA. Your email request was sent on July 22, 2014 and you did not receive acknowledgement until August 4, 2014.

Furthermore, the DOC appears to have suggested you are required to come to Indiana in-person and inspect the records and make copies. It indicates DOC staff does not have the time or resources devoted to public access to satisfactorily fulfill your request.

As indicated in the General Assembly’s “preamble” to the Access to Public Records Act, providing access to the public is an integral part of a public agency’s duties. A request cannot simply be denied because it is voluminous or yields a substantial amount of information. Your request was reasonably particular to the point the information you sought has been identified. It may very well take a good bit of time, energy and resources to actually gather, copy and provide the information; however, there is an affirmative duty for an agency to do so. While public access is not a ‘drop-everything-and-attend-to-the-request-immediately’ duty, an agency must produce the documents in a reasonable amount of time.

As to providing you the copies in person versus mailing, this situation is very similar to one encountered and addressed in *Opinion of the Public Access Counselor 14-FC-108 & 121 (Consolidated)*. In that particular case, a similarly situated out-of-state requestor asked an agency to gather and mail records. I opined:

Despite the APRA’s silence on mailing, best practice would entail advising the requestor of the cost of postage and mailing documentation anyway. I still believe this to be the case. The spirit of the APRA is to allow access to everyone no matter where or how they are situated. Public

agencies routinely receive out-of-state records requests and mail them out of courtesy, recouping their cost by charging the actual cost of postage. In some cases, "provide" may mean merely making available. However, some individuals who lack the ability to collect records at an agency's place of business (inmates, shut-ins, out-of-state requestors) may require a heightened level of service. I encourage agencies to use sound judgment and mail records whenever possible.

I reiterate that particular analysis in the present case. The DOC has possession of the records; I encourage them to provide them to you as soon as reasonably possible. Please be advised the DOC may also charge up to a \$.10 per-page copying fee and also postage.

### **CONCLUSION**

It is the Opinion of the Public Access Counselor the Indiana Department of Correction violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Robert Bugher, Esq.