



# STATE OF INDIANA

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May 25, 2016

Mr. Alvin M. Best #850121  
Putnamville Correctional Facility  
1946 W. U.S. Hwy 40  
Greencastle, IN 46135

*Re: Formal Complaint 16-FC-93; Alleged Violation of the Access to Public Records Act by the Putnamville Correctional Facility Education Department*

Dear Mr. Best:

This advisory opinion is in response to your formal complaint alleging the Putnamville Correctional Facility Education Department ("Department"); Mr. James Hendrix violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Mr. Hendrix. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 29, 2016.

## BACKGROUND

Your complaint dated April 21, 2016 alleges the Putnamville Correctional Facility Education Department and Mr. James Hendrix violated the Access to Public Records Act by not responding to your records request.

On April 7, 2016, you sent a records request to the Department seeking a list of individuals which took a particular test at the facility where you are incarcerated. You received no response.

On May 2, 2016 the Department responded. The Department notes education records are nondisclosable under the APRA. It also notes you were advised of this fact. However, it does not provide a date for this communication or how you were notified.

## 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 Indiana Code § 5-14-3-1.* The Putnamville

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

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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 evidently received your request by April 15, 2016 based on email communications between Facility staff. The Department states you were informed records could not be provided to you. However, it does not provide a date for this communication and does not otherwise address the alleged failure to respond.

The Department must respond within seven (7) days of receipt. Without a date, I cannot determine when the Department received your request. However, based on the fact Facility staff were discussing your request on April 15, 2016 and the fact your complaint is dated April 21, 2016, I can assume you did not receive a response prior to April 21, 2016. Without knowing an exact date your complaint was received, I cannot conclusively state whether the Department violated the APRA by failing to respond within seven (7) days. If they did not respond, they have violated the APRA.

As for educational records being confidential, the Department relies upon the Federal Education Rights and Privacy Act ("FERPA"). Codified at 20 U.S.C. § 1232g; 34 CFR Part 99, FERPA applies to educational agencies and institutions (e.g., schools) which receive funding under any program administered by the U.S. Department of Education. I am not aware if the Putnamville Correctional Facility Education Department receives Federal funding from the U.S. DOE and they have not provided any information whatsoever in their defense. Without the benefit of a proper response from the agency, I cannot make this determination.

In any case, you allege the list of test takers is posted at the facility, rendering the FERPA defense moot. As for the outcome of the test, please be advised the Access to Public Records Act does, in fact, declare the release of scores of tests discretionary (but not confidential). Nothing in the APRA prohibits the release of test takers or applicants of tests, however.

### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Putnamville Correctional Facility Education Department has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. James Hendrix