

OPINION OF THE PUBLIC ACCESS COUNSELOR

TRACEY L. WHEELER,
Complainant,

v.

CORRECTIONAL INDUSTRIAL FACILITY,
Respondent.

Formal Complaint No.
20-FC-31

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Correctional Industrial Facility violated the Access to Public Records Act.¹ CIF did not respond to the complaint despite an invitation to do so on March 3, 2020. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on March 2, 2020.

¹ Ind. Code §§ 5-14-3-1-10.

BACKGROUND

This case involves a dispute over the access to documents maintained by the Correctional Industrial Facility (CIF) in Pendleton.

On February 5, 2020, offender Tracey L. Wheeler (Complainant) filed a public records request with CIF seeking the following:

Any and all conduct reports that were written on 8-26-19 relating to the interference of the 2pm count in PEN/Industries. To wit; interference with count.

On February 18, 2020, CIF denied Wheeler's request. CIF noted that it denied Wheeler's request because the records he requested are confidential information regarding other offenders. CIF did not cite authority for the denial.

As a result, Wheeler filed a formal complaint on March 2, 2020, alleging CIF improperly denied him access to records under the Access to Public Records Act (APRA). Wheeler argues that inmate names and DOC numbers are public record and conduct reports are sometimes part of a court proceeding and even available online therefore his request should be fulfilled.

On March 3, 2020, this office sent CIF notice of the complaint to the executive assistant to the warden – the same individual who denied the request. As of the writing of this opinion on April 23, 2020, no response has been received.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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.” Ind. Code § 5-14-3-1. The Correctional Industrial Facility (CIF) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the CIF’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Wheeler’s request

While the Indiana Department of Correction’s administrative rules do contain some APRA exceptions to maintain the health and safety of incarcerated offenders, CIF cited none of those authorities in its denial of Wheeler’s request.

Indeed, APRA authorizes an agency to deny written public records requests based upon certain exceptions. A denial must include the following:

- (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
- (B) the name and the title or position of the person responsible for the denial.

Ind. Code § 5-14-3-8(d). Without the benefit of a response from CIF, it does not appear the agency included the information in part (A) in the denial. Even if there is statutory authority to deny Wheeler's request, CIF did not properly cite it as required by APRA.

Notably, Indiana Code section 5-14-5-5, a public agency must cooperate with any investigation by the public access counselor. This office notified CIF of Wheeler's complaint before nonessential personnel were given work-from-home orders and before the governor's executive orders went into place closing certain government offices.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Correctional Industrial Facility violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the name of the signatory.

Luke H. Britt
Public Access Counselor