

February 21, 2000

Ms. Velma K. Bell
RR 1, Box 172
Shoals, IN 47581

Re: Advisory Opinion 00-FC- *Alleged Denial of Access to Public Records by the Indiana Department
5; of Correction.*

Dear Ms. Bell:

This is in response to your formal complaint, which was received on February 9, 2000. You have alleged that the Indiana Department of Correction ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3, by denying you access to public records that you requested in a letter dated December 20, 1999. Mr. Edward L. Cohn, Commissioner of the Department, responded to your complaint in a letter dated February 11, 2000. A copy of his response is enclosed for your reference. For the reasons stated below, it is my opinion that the Department has not denied you access to the public records requested in that they did respond in a timely manner to your December 20, 1999 request and eventually produced the available public records as provided in the APRA.

BACKGROUND

According to your complaint, you sent a public records request dated December 20, 1999, to the Department requesting a number of documents concerning the use of a private prison facility, including but not limited to, personnel file information, contracts, monthly reports, and screening procedures. You received a letter from Department attorney Robert Bugher dated December 27, 1999, that acknowledged the receipt of your request on December 22nd and explained that the Department was compiling the records requested and that the records would be produced "when available." In addition, Mr. Bugher asked for clarification on two of the items listed in your December 20th request. On December 31, 1999, your handwritten clarifications of the two items were placed at the bottom of Mr. Bugher's letter and you sent a copy of it back to him. As of the time of the filing of your complaint, you had not received anything from the Department.

In his response to your complaint, Mr. Cohn noted that the Department received your December 20th request and responded, as is required under the APRA, within the seven (7) days following its receipt. According to Mr. Cohn, Mr. Bugher contacted this Office after receiving your request to confirm that he must respond within the seven (7) days after receipt of the request, but that he was not obligated to produce the public records within that same time frame when it was not possible to gather

the documents in that time. On December 27th, Mr. Bugher responded by letter to your request, five (5) days after receiving it, acknowledging that the public records would be produced as soon as they were available, and asking for clarification of two of the items you requested. Mr. Bugher received your clarifications some time in early January 2000. On February 10, 2000, the Department sent you all available public records in response to your December 20th request.

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." Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

Under the APRA, "if a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request." Ind. Code §5-14-3-9(b). It is the responsibility of the public agency to respond to requests for public records within this time period. The APRA does not set any time periods for producing public records, merely for responding to the request.

It is clear that the Department was required to respond to your written request within seven (7) days after its receipt and that this was done. While "response" has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection. The requestor should also be alerted as to when any public records will be made available. Further, as noted in a prior Advisory Opinion of this Office, if the public agency needs clarification concerning any request, it is incumbent upon the public agency to seek such clarification. ¹

The Department did respond to your December 20th request within the time period specified under Indiana Code section 5-14-3-9(b). This response notified you that your request had been received, that the records were being compiled and that the Department needed clarification of two of the items requested. The Department also informed you that they would produce the public records requested "when they are available." The Department produced the public records to you after the filing of your formal complaint with this Office, which was seven (7) weeks after they received your initial request. It is my opinion that the burden for showing that the time for production was reasonable lies with the public agency since they are in control of the public records in question. For this reason, I generally advise public agencies to communicate to the requestor a more specific date or time period for production of the public records. You have now received the public records requested, and therefore,

were ultimately not denied access under the APRA.

From the facts presented, it is my opinion that the Department did respond to your December 20, 1999 public records request within the time period required under Indiana Code section 5-14-3-9(b). The Department has also produced the public records in question since the time of the filing of your formal complaint. The Department, therefore, has not denied you access to public records in violation of the APRA.

CONCLUSION

It is my opinion that the Indiana Department of Correction responded to your December 20th public records request within the time period required under the Access to Public Records Act and has now produced the public records in question. You were not, therefore, denied access under the Access to Public Records Act, Indiana Code chapter 5-14-3.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: : Edward L. Cohn, Commissioner
Indiana Department of Correction

[1](#) See Opinions of the Public Access Counselor, 00-FC-2.