

January 23, 2001

Mr. William Holly
#946422 D5-101
Maximum Control Complex
Post Office Box 557
Westville, IN 46391-0557

Re: *Advisory Opinion 01-FC-03*; ;Denial of Access to Personnel File Information by the Indiana Department of Correction.

Dear Mr. Holly:

This is in response to your formal complaint, which was received on January 8, 2001. You have alleged that the Indiana Department of Correction ("Department") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you allege that Mr. Mark Levenhagen, Administrative Assistant at the Maximum Control Complex failed to respond to your request for information from a particular employee's personnel file. Ms. Jill Doty Russell, Staff Attorney for the Department responded in writing to your complaint. A copy of her response is enclosed.

Based upon the facts as presented in your complaint, it is my opinion that the Department's failure to respond to your public records request within twenty-four (24) hours after its receipt was a denial and that this denial actionable under Indiana Code section 5-14-3-9 of the APRA.

BACKGROUND

According to your complaint, you delivered¹ your written request to Mr. Levenhagen, who serves as an administrative assistant at the Department's Maximum Control Complex. You received no response to your December 5, 2000 request, so you filed your formal complaint with this Office in January, 2001.

After you filed your formal complaint, Mr. Levenhagen did provide the information you requested about a particular employee of the Department on January 10, 2001. According to Ms. Russell's response, you received no response to your request because of the Department's concern about sharing information concerning female staff members with you based upon prior complaints of Department employees about your alleged harassment and stalking of them by mail.

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).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this 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.

A public agency is required to make a response to a hand-delivered written request within twenty-four (24) hours after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code §5-14-3-9(b).

You made a request for "the complete employment record and the compensation of " a particular employee "as the statutes set forth." It is my opinion from the information provided to me that the Department did fail to provide you with a response within twenty-four (24) hours of receiving your request. This failure to respond constituted a denial that is actionable in court under Indiana Code section 5-14-3-9(b).

It is also my opinion that you are not entitled to the "complete personnel file" of any public employee under the APRA. Under Indiana Code section 5-14-3-4(b)(8), a public agency is required to provide the following information upon a request for a specific employee:

- A. the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- B. information relating to the status of any formal charges against the employee; and
- C. information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

After receiving your formal complaint, the Department did provide you with all of the above-listed information for the specific employee in question. Under Indiana Code section 5-14-3-4(b), the Department does have discretion to refuse you access to any other information that may be maintained

in the employee's personnel file.

Finally, the Department claims that the failure to respond and the delay in providing this information to you was based upon concerns that you would use the information to harass or stalk female staff members. Certainly, I am not condoning this use of the information, but I can only interpret the APRA as written. The APRA does not permit a public agency to deny access to public records based upon the purpose of the request, unless another statute permits the agency to require that the purpose be stated in order to obtain access. Ind. Code §5-14-3-3(a). In this case, no such statute exists that would permit the Department to refuse you access to personnel file information required to be disclosed under Indiana Code section 5-14-3-4(b)(8)(A-C).

CONCLUSION

It is my opinion that the Indiana Department of Correction failed to respond within twenty-four (24) hours after receiving your December 5th public records request for personnel file information about a specific employee. This denial is actionable in court under Indiana Code section 5-14-3-9 of the Access to Public Records Act.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Jill Doty Russell, IDOC

¹ You did not specify the means of delivery, so I have assumed for the purposes of this Opinion that your request was hand-delivered rather than sent via U.S. Mail or facsimile.