

June 3, 2002

Mr. John Emry
62 W. Jefferson Street
Franklin, IN 46131-3211

Re: *Advisory Opinion 02-FC-17*;
Alleged Denial of Access to Public Records by the Indiana Department of Correction.

Dear Mr. Emry:

This is in response to your formal complaint, which was received on May 13, 2002. You have alleged that the Indiana Department of Correction, Westville Correctional Facility (hereinafter, "Department,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you were improperly denied access to offender records under Departmental Policy #01-04-104. Ms. Pam Pattison, Director of Media and Public Relations for the Department, responded in writing to your complaint and a copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the denial of your request violated the APRA to the extent that the administrative rules of the Department authorized you access to information from your client's file.

BACKGROUND

In your complaint, you allege that on May 2, 2002, you requested specific information under Department Policy #01-04-104 and provided the Department with a signed authorization from your client, Offender Jeffrey Sullivan, about whom you were requesting copies of public records. On May 13, 2002, you received a response from Ms. Sharon Hawk of the Department denying you access to any offender records without a court order. You contend there was no basis for this denial and filed your formal complaint with this Office.

In response to your complaint, Ms. Pattison stated that Department staff has been instructed to provide you with the public records you requested in accordance with the Department's administrative rule permitting you access, which excludes psychiatric and psychological mental health records. Ms. Pattison claims that it was not the intent of the Department to deny you access to your client's offender records. She also suggests that in the future you direct public records requests to the Department's Legal Division or Office of Media and Public Relations to ensure that you are provided with an appropriate response.

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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." 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). A person who has been denied access to public records under the APRA may file an action in circuit or superior court to compel the public agency to allow inspection and copying of the public records. Ind. Code §5-14-3-9 (d).

One exception to disclosure under the APRA is for records that are "declared confidential by rule adopted by a public agency under" specific statutory authority to do so. Ind. Code §5-14-3-4(a)(2). The Department has authority under Indiana Code section 11-8-5-2(a) to promulgate administrative rules to "classify as confidential . . . personal information maintained on a person who has been committed to the department or who has received correctional services from the department." Indiana Code section 11-8-5-2(b) also provides that the Department may keep confidential information from the offender or other persons unless ordered to disclose by a court, for research purposes or if the Commissioner of the Department determines there is a compelling public interest to disclose them.¹

The Department has classified certain offender records as confidential by administrative rule at 210 IAC 1-6-2² and an offender, or his agent's, rights to access confidential or restricted information are set forth at 210 IAC 1-6-4. Department Policy #01-04-104³, which further addresses access to offender records, is based upon the Department's administrative rules.

Under the current version of 210 IAC 1-6-4, you are entitled to access, as your client's agent, records classified as confidential by the Department except for:

Medical, psychological, psychiatric data, or clinical data produced as a consequence of the offender's involvement in a substance abuse program.

* * *

Criminal intelligence information including reports or statements of witnesses concerning institutional conduct or conduct while on parole wherein appear names of or identifying information concerning witnesses.

210 IAC 1-6-4(A)(1 & 2). This rule further states that the person requesting access to these confidential records shall provide proper identification upon request. 210 IAC 1-6-4(B). Any request from a person other than the offender must provide a notarized statement by the offender identifying the person is

acting as his or her agent. Id.

According to your complaint, you sent a request to the correctional facility at which your client is housed, with a signed and notarized release and were advised by Ms. Sharon Hawk that you could not access these records without a court order. Ms. Pattison's response indicates that you should have been provided with a copy of the offender's records, but for any records not disclosable to you under 210 IAC 1-6-4(A). So, the initial denial of access violated the APRA and it is actionable in court under Indiana Code section 5-14-3-9. While this does not alter the fact that the initial denial was not appropriate under the APRA, you have now been provided with access to the records that are disclosable to you.

CONCLUSION

It is my opinion that the Department of Correction improperly denied you access with respect to your request for access to a client's records under the APRA and administrative rule 210 IAC 1-6-4 and this denial is actionable in court under Indiana Code section 5-14-3-9.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Pam Pattison, IDOC w/o enclosure

¹ There are additional exceptions that permit the Department to disclose to other public agencies as well.

² The Department is in the final stages of rulemaking that will broaden an offender's access under 210 IAC 1-6. This proposed rule would not be final until approved by the Attorney General and Governor. See Administrative Proposed Rule 01-358.

³ This policy has been amended by the Board of Correction to reflect expected changes to the administrative rule and will be effective June 15, 2002.