

November 20, 2002

Mr. Larriante J. Sumbry
#965137 C-455
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-58*; Alleged Denial of Access to Public Records by the Indiana Department of Correction.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on November 6, 2002. 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 claim that the Department denied you access to public records by failing to respond to your October 22, 2002 request. Ms. Pam Pattison, Director of Media and Public Relations for the Department, responded in writing to your complaint. For the reasons set forth below, it is my opinion that the Department did not respond to you within the time period required under Indiana Code section 5-14-3-9(b) and that this failure to respond constituted a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you sent a request to the Department dated October 22, 2002. You asked for the names and addresses of each prison in the State of Indiana, the amount of state pay that each prisoner gets on idle status and the Department's policy for state pay including any state statutes. You apparently ¹ addressed your request to Ms. Evelyn Turner, Commissioner of the Department. You had not received a response as of October 31, 2002, so you then filed your formal complaint with this Office.

In response to your complaint, Ms. Pattison stated that it was not the intent of the Department to deny you access to public records, but that not responding to your October 8th request was a matter of isolated neglect. Ms. Pattison also provided to this Office a copy of the Department's substantive response to your request, a copy of which is enclosed.

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).

It is the responsibility of the public agency to respond to requests for access to 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. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. 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(d).

According to the information provided, the Department did receive your public records request, but failed to respond within the seven (7) day period after receiving that request. For this reason, it is my opinion that the Department did deny you access in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(b). While this does not alter my opinion, the Department has now provided a response to your October 8th request.

CONCLUSION

It is my opinion that the Indiana Department of Correction did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that this constituted a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Pam Pattison, DOC

¹ You did not provide a copy of your request to this Office, this is based only on the information provided in your complaint form.