



STATE OF INDIANA

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October 13, 2026

Re: Complaint 26-FC-152
Theodore Hesson (Complainant) v.
Indiana Department of Corrections (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed on April 8, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on August 4, 2026, requesting a formal response by September 1, 2026. A formal response, submitted by David BeBruyn, Indiana Department of Corrections (IDOC) attorney, on behalf of Respondent, was received in this office on August 31, 2026.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) when it denied access to the requested records.

ANALYSIS

The public policy of 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." IC 5-14-3-1.

Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(s). As a result, unless an exception applies, any person has the right to inspect and copy Respondent's public records during regular business hours. IC 5-14-3-3(a).

On March 25, 2026, the Complainant filed an APRA request with IDOC, regarding the death of an inmate, seeking:

- 1) All video footage and documentation related to the death of a certain ICE detainee.

- 2) Written documentation including records and emails related to the incident.
- 3) Any records related to the detainee's immigration case and time in ICE detention.
- 4) Communications between ICE, the Miami Correctional Facility, IDOC, or prison contractors regarding the incident and the detention of the detainee.

Respondent informed the Complainant on March 26, 2026, that it did not maintain any of the records requested, had completed its response, and was closing the file. The response did refer the Complainant to the U.S. Immigration and Customs Enforcement agency.

APRA requires that public records are disclosable when requested under IC 5-14-3-1, et seg. To the extent that Respondent had records of a state nature that it created or held, those records were subject to disclosure, and subject to statutory exceptions. Respondent refers to a Memorandum of Agreement (MOA) with ICE suggesting that the records were in the possession of ICE and, therefore, unavailable. This office disagrees.

There should have been institutional state records that were disclosable, such as records documenting admission and release from the Miami Correctional Facility, discipline matters, doctor examinations, and potentially coroner records. The MOA states in Section V(C), titled "Release of Information to Third Parties," that "[n]othing herein limits the LEA's (IDOC) compliance with state public records laws regarding those records that are solely state records and not ICE records."

Furthermore, the MOA states, "information obtained or developed as a result of this MOA, including any documents created by the LEA that contain information developed or obtained as a result of the MOA, is under the control of ICE and shall not be disclosed." However, the MOA provides exceptions to nondisclosure where:

- "1) permitted by applicable law, regulations, or executive orders; and
- 2) the LEA has coordinated in advance of release with (a) the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval, prior to any release to the media, or (b) an ICE officer prior to releases to all other parties."

There is no indication that Respondent sought approval from ICE to release applicable records to fulfill Complainant's request.

While the records were under the control of ICE pursuant to the MOA, that does not preclude IDOC from accessing records that are public records.

This office has also advised that if a record exists but is held by a third party then that record should be produced. In *Opinion of the Public Access Counselor* 25-FC-017, this office relied upon the Court in *Knightstown Banner, LLC v. Town of Knightstown*, 838 N.E.2d 1127. That Court held that a settlement agreement being held by counsel for an insurance company was a public record of the Town of Knightstown. *Id.* Even though Knightstown did not have a copy of the settlement in its possession, it was deemed a public document that should have been in the files of the Town. *Id.* This office advised "[s]ince Respondent was a party to this MOU, it should follow that Respondent should have maintained a copy of the MOU. The MOU was signed on July 14, 2020, and is still a valid and controlling document." *Opinion of the Public Access Counselor* 25-FC-017.

Respondent should have disclosable records to provide to the Complainant, regardless of whether those records are in Respondent's possession or not. Respondent did not follow the MOA's document requesting process in order to obtain any of the public records requested.

CONCLUSION

This office finds that the Respondent did violate APRA by failing to provide public records held by the Respondent and for not seeking approval for release of the requested records from ICE as permitted within the MOA.

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