

May 21, 2008

Derek Morris  
DOC #104145  
Pendleton Correctional Facility  
PO Box 30  
Pendleton, Indiana 46064

*Re: Formal Complaint 08-FC-118; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction Reception-Diagnostic Center*

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction Reception-Diagnostic Center (“Center”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by failing to respond to your request for access to records. I have enclosed a copy of the Center’s response to your complaint for your reference. It is my opinion the Center violated the Access to Public Records Act by not responding to the request within time allowed by the APRA.

#### BACKGROUND

In your complaint you allege that you requested records from the Center on March 26, 2008. Specifically, you requested records related to the results of your DNA swab test. You allege that you received no response to your request. You mailed this complaint on April 23, and my office returned it to you because the form was incomplete. You resubmitted the complaint on May 1, and we received it on May 7.

The Center responded to the complaint by undated letter from David Bonner of the Center. We received the letter on May 15. The Center contends that it does not receive the results of the DNA swab test sent to the Indiana State Police. By letter dated May 12, the Center provided you the appropriate contact information for the agency which maintains the records.

#### ANALYSIS

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

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail, facsimile, or electronic mail and the Center does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

Here you allege you submitted the request to the Center by letter dated March 26. The Center had a duty to respond to the request, even if the Center does not maintain the requested records. The Center's response could have been an indication that the Center does not maintain the records and an indication that you should contact the Indiana State Police Lab for the records. If the Center did not respond to the request, it violated the APRA.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Center violated the Access to Public Records Act by not responding to the request within time allowed by the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: David Bonner, Reception-Diagnostic Center