



# STATE OF INDIANA

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June 2, 2009

David Bowman  
339 Sunbeam Lane  
Greenwood, Indiana 46143

*Re: Formal Complaint 09-FC-122; Alleged Violation of the Access to Public Records Act by Marion County Community Corrections*

Dear Mr. Bowman:

This advisory opinion is in response to your formal complaint alleging Marion County Community Corrections ("MCCC") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of MCCC's response to the complaint is enclosed for your reference. It is my opinion MCCC has not discharged the burden of proof to sustain the denial.

## BACKGROUND

You allege that on April 24, 2009 you requested from MCCC information regarding where a prisoner would be placed and what restrictions would be placed on him. You allege you were told you would need to retain an attorney to gain access to the information. You filed the present complaint on May 8, alleging MCCC has violated the APRA.

MCCC responded to the complaint by letter to you dated May 21 from Logan Patrick Harrison of the City of Indianapolis Office of Corporation Counsel. MCCC contends it has the authority, conveyed by I.C. § 11-8-5-2(a)(3) (MCCC omitted the (a), but I believe this is the subsection to which MCCC refers), to classify as confidential certain personal information maintained on a person who has been committed to the department or who has received correction services from the department. This information includes information which, if disclosed, might result in physical harm to that person or persons. MCCC contends it denies your request to protect the offender's security. MCCC indicates that you may obtain any court records from Marion Superior Court.

You sent to my office another letter, dated May 27. You contend that MCCC's interpretation of the exception cited regarding an offender's safety is too broad. You argue that because the legislature has required sex offenders to be registered and their

personal information made available to the public, it follows that an offender convicted of another type of offense should not need the protection of non-disclosure.

## 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. MCCC is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of MCCC 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).

You allege that MCCC has violated the APRA by denying you access to information regarding an offender. I would note that nothing in the APRA requires an agency to answer questions or provide *information*. Instead, the APRA requires an agency to provide access to inspect and copy records, unless an exception to disclosure applies. *See* I.C. § 5-14-3-3. So while you have complained that MCCC has failed to provide you information, I will treat the issue in terms of the APRA (i.e. that MCCC denied you access to a record).

MCCC contends that the record you seek is excepted from disclosure pursuant to I.C. § 11-8-5-2(a)(3). The APRA provides that an agency is required to withhold from disclosure records which are "declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute." I.C. § 5-14-3-4(a)(2). MCCC contends that I.C. § 11-8-5-2(a)(3) allows it to withhold from disclosure the record you have requested. I do not agree.

I.C. § 11-8-5-2(a)(3) provides, in part, the following:

The department may, under IC 4-22-2, classify as confidential the following personal information maintained on a person who has been committed to the department or who has received correctional services from the department:

...

(3) Information which, if disclosed, might result in physical harm to that person or other persons.

This provision gives the Indiana Department of Correction the authority to promulgate administrative rules, following the procedure for promulgating rules provided in I.C. 4-22-2. MCCC contends this provision gives it the authority to withhold the records from disclosure. But while MCCC may receive funding through the Department, MCCC is not the Department. *See* I.C. § 11-12-1-1, defining "community corrections

program.” I.C. § 11-8-5-2(a)(3) specifically grants the Department the rulemaking authority. This rulemaking authority does not extend to community corrections programs. Further, it appears from MCCC’s response that MCCC has read the rulemaking authority to simply allow MCCC to withhold records from disclosure. Even if I.C. § 11-8-5-2(a)(3) did extend to MCCC, MCCC would need to promulgate administrative rule declaring the records confidential. But I.C. § 11-8-5-2(a)(3) does not grant MCCC such rulemaking authority.

MCCC has not cited an administrative rule promulgated by the Department of Correction which would require MCCC to withhold the requested information from disclosure. Absent an assertion of any other statutory authority for withholding the record from disclosure, it is my opinion MCCC has violated the APRA by denying you access to the requested record. Should MCCC assert another exception to disclosure, MCCC would bear the burden of proof to sustain the denial on that basis.

#### CONCLUSION

For the foregoing reasons, it is my opinion MCCC has not discharged the burden of proof to sustain the denial.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Logan Patrick Harrison, Office of Corporation Counsel, City of Indianapolis  
Thomas Marendt, Marion County Community Corrections