



# STATE OF INDIANA

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June 18, 2009

Ernest Tope  
DOC #5277  
5501 South 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 09-FC-133; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Tope:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion the Department's response was untimely under the APRA. Further, the Department has not demonstrated the time it took to provide you copies of the requested records was reasonable.

## BACKGROUND

You allege that on December 20, 2008 you sent to the Indiana Department of Administration a request for copies of two of the Department's contracts with outside vendors. The Department of Administration forwarded your request to the Department, which responded to you by letter dated January 16, 2009. The Department indicated that given the breadth of your request, it would take some time to analyze the request and determine which records may be disclosed.

On March 30 you sent a letter to the Department inquiring about the status of the request. On April 30 the Department sent you a letter indicating the fee for the copies you requested. In the April 30 letter, the Department indicated it would send you copies of two contracts upon receipt of your payment. You contend that while one of the records is what you requested, the other contract you request is for Aramark but the Department has indicated it will provide you a copy of a contract with CMS. You filed the present complaint on May 27 (postmarked May 22).

The Department responded to the complaint by letter dated June 16 from Robert Bugher. The Department confirms it received your request on January 2 and responded

by letter dated January 16. The Department further confirms it next sent you a letter dated April 30, wherein the Department indicated the cost for the copies. The Department indicates it will send you the copies upon receipt of payment.

## 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 Department 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 the Department 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 or facsimile transmission and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you sent the request to the Department of Administration, which forwarded it to the Department. The Department received the request on January 2 but did not respond to you until January 16. Since the response was not sent within seven days, the response was untimely under the APRA. *See* I.C. § 5-14-3-9(b).

The Department sent you a subsequent letter on April 30, indicating copies of two contracts would be made available to you upon receipt of payment. The January 16 letter contained an indication that because of the breadth of your request, it may take some time to provide you the records. Here, though, you requested copies of two contracts. Absent any explanation from the Department, I do not understand that to be an overly broad request. In my opinion, the request identifies with reasonable particularity the records being requested, as required by I.C. § 5-14-3-3(a). And absent any explanation from the Department as to why it took nearly three months to make available copies of two contracts, I do not believe that time to be reasonable for production of two records. Finally, the Department has not indicated why it refers to a "CMS" contract when you requested an "Aramark" contract. If those are one and the same, or if CMS provides the

services you thought Aramark provides, it is my opinion the Department should indicate why its response offers records different from what you requested.

Regarding copy fees, the Department may require advance payment for copy fees. I.C. § 5-14-3-8(e). To receive copies of the records, you must first remit payment to the Department.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Department's response was untimely under the APRA. Further, the Department has not demonstrated the time it took to provide you copies of the requested records was reasonable.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Robert Bugher, Indiana Department of Correction