



# STATE OF INDIANA

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July 16, 2009

Shawn Jeffries  
DOC #874573  
5501 South 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 09-FC-153; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction*

Dear Mr. Jeffries:

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 but the Department has not otherwise violated the APRA.

## BACKGROUND

You allege that on June 10, 2009 you sent to the Department a request for copies of records. You filed the present complaint on July 7 (postmarked June 29), alleging you had not yet received a response to the request.

The Department responded to the complaint by letter dated July 14 from Robert Bugher. The Department confirms it received your request on June 16 and responded by letter dated June 26. The Department contends that in the June 26 letter was an indication the Department would provide you the requested copies upon receipt of payment in the amount of \$4.70 for copy costs.

## 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, the Department received your request on June 16 and responded by letter dated June 26. Since the response was not sent within seven days, the response was untimely under the APRA. *See* I.C. § 5-14-3-9(b).

While untimely, the Department's response did indicate to you that the Department would send you the copies upon receipt of payment of copy costs. The APRA allows the Department to 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 but the Department did not otherwise violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Robert Bugher, Indiana Department of Correction