



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

March 19, 2009

Christopher Pavey  
DOC #885943  
4409 West Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 09-FC-58; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility*

Dear Mr. Pavey:

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Facility's response to your complaint is enclosed for your reference. It is my opinion the Facility has not violated the APRA.

## BACKGROUND

You allege that on or about January 8, 2009 you submitted a request for access to the records to the Facility. You received a response from the Facility dated January 8, wherein the Facility indicated you must submit your request using the "Request for Access to Public Records" form. You resubmitted your request and received another response, dated January 14, from the Facility. David Barr of the Facility indicated he hoped to have the documents within the next fourteen days and would contact you if it would take longer. You now allege you have not yet received the records. Your complaint was postmarked on February 11 and received by my office on February 18.

The Facility responded to the complaint by letter dated February 19 from Mr. Barr. The Facility confirms it received your initial request and responded that you should utilize the appropriate form. Further, the Facility confirms it received your subsequent request and responded to it. Mr. Barr clarifies that his response did not contain an indication you would receive the records within fourteen days but that he would notify you if it would take longer than fourteen days. Mr. Barr further contends that on January 21 he sent you a final response, denying access to the records on the basis that the record you requested does not exist. Mr. Barr further indicates this will not affect your tort claim filing.

## 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 Facility 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 Facility 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 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).

Here, the Facility responded to your request initially on the day it was received. After you resubmitted the request, the Facility responded to it within one day. Pursuant to I.C. § 5-14-3-9(b), the response was timely. The Facility has the authority, as provided in I.C. § 5-14-3-3(a), to require the request to be made in writing in the form prescribed by the Facility.

Regarding the substance of your request, the Facility contends it does not maintain any record responsive to your request. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If the Facility does not maintain any records responsive to your request, it cannot provide you access to any such records.

## CONCLUSION

For the foregoing reasons, it is my opinion the Facility has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: David Barr, Pendleton Correctional Facility