



STATE OF INDIANA

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March 19, 2009

Nathan Smith
15344 Lakeside Road
Lakeside, Michigan 49116

Re: Formal Complaint 09-FC-60; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction Westville Correctional Facility

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction Westville Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Facility's response to the complaint is enclosed for your reference. It is my opinion the Facility's response to the request was untimely but the Facility has not otherwise violated the APRA so long as it provides you access to any disclosable records responsive to the request.

BACKGROUND

You allege that on January 27, 2009 you sent to the Facility a request for access to a number of records. You allege that as of the date of your complaint you have not received a response from the Facility. Your complaint was received by my office on February 19.

The Facility responded to the complaint by electronic mail message dated February 24 from John Schrader. Mr. Schrader contends he responded to your request by letter dated February 13. He indicates the request was misrouted within the Facility, which caused a delay in sending the response. Mr. Schrader indicates he is working with legal counsel from the Department of Correction to determine which records are disclosable. Once that is determined, Mr. Schrader will notify you of the amount you need to remit 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 Facility is 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).

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.

If the Facility received your mailed request, the Facility had the duty to respond to the request within seven days of receipt. I.C. § 5-14-3-9(b). Here, the Facility received your request, but it was misrouted within the agency. As such, the Facility's response was untimely under the APRA. So long as the Facility does indeed review the records to determine which are disclosable and notify you of the copy costs and then provide you copies upon payment of those costs, the Facility has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility's response to the request was untimely but the Facility has not otherwise violated the APRA so long as it provides you access to any disclosable records responsive to the request.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: John Schrader, Westville Correctional Facility