



# STATE OF INDIANA

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April 20, 2009

Michael Adam Christianson  
DOC #135489  
727 Moon Road  
Plainfield, Indiana 46168

*Re: Formal Complaint 09-FC-83; Alleged Violation of the Access to Public Records Act by the Plainfield Correctional Facility*

Dear Mr. Christianson:

This advisory opinion is in response to your formal complaint alleging the Plainfield Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you 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 denial did not meet the technical requirements of the APRA, but the Facility has not otherwise violated the APRA.

## BACKGROUND

You allege that on March 13, 2009 you requested access to electronic mail communications regarding the change in your dietary privileges. The Facility denied you access to the records, indicating the records are "confidential communication." Your complaint was postmarked March 20, and my office received it on March 24. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Facility responded to the complaint by letter dated March 30 from Kevin Mulroony. The Facility contends that your request was denied because you requested access to secured communications between staff. The Facility contends secured communication between staff is vital to maintaining safety and security in a correctional environment. The Facility further contends a search for responsive records revealed only one record responsive to your request.

## 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).

Only records identified in I.C. § 5-14-3-4(a) are confidential records. As used in the APRA, "confidential records" are those which may not be disclosed absent a state or federal statute or order of the court requiring disclosure. *Id.* In contrast, the APRA also provides a number of categories of records which may be disclosed by an agency at the agency's discretion. A listing of such records may be found in I.C. § 5-14-3-4(b). One group of records which may be disclosed at the discretion of the agency is the following:

Records requested by an offender that:

...

(B) concern or could affect the security of a jail or correctional facility.  
I.C. § 5-14-3-4(b)(23)

The APRA defines "offender" as "a person confined in a penal institution as the result of the conviction for a crime." I.C. § 5-14-3-2(i). Because you are an offender, the Facility may withhold from disclosure records that "concern or could affect the security" of the Facility. *See* I.C. § 5-14-3-4(b)(23).

Further, regarding denial of access, the APRA provides that when a request is made in writing, an agency may only deny the request if the following is true:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:
  - A. a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
  - B. the name and title or position of the person responsible for the denial.

I.C. § 5-14-3-9(c).

Here, the Facility denied you access to communication between staff members regarding your dietary privileges. The Facility made the following notation on your request: "Request Denied. Documents are confidential communication." Following the notation is what I assume to be Mr. Mulroony's signature.

In my opinion, the Facility would likely be able to bear the burden of proof to sustain the denial of access on the grounds that disclosure of the records could affect the security of the Facility. The problem here, though, is the form of the denial. The denial

lacks the title or position of the person responsible for the denial, which is required by I.C. § 5-14-3-9(c)(2)(B). Further, the denial contains an indication the records are confidential. To the contrary, the records are not confidential. The records may be withheld at the discretion of the agency pursuant to I.C. § 5-14-3-4(b)(23), but records listed in I.C. § 5-14-3-4(b) are not confidential. As such, it is my opinion the response constitutes a technical violation of the APRA.

While the Facility may have violated the APRA by failing to appropriately deny you access to the records, it is my opinion the Facility may exercise its discretion to deny you access to the requested records, based on the exception found in I.C. § 5-14-3-4(b)(23). I would urge the Facility to be sure in the future to cite the specific exemption authorizing the Facility to withhold all or parts of the record.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Facility's denial did not meet the technical requirements of the APRA, but the Facility has not otherwise violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Kevin Mulroony, Plainfield Correctional Facility