

August 16, 2004

Mr. Michael Hunt
c/o Helen Coleman
4109 North Central
Indianapolis, IN 46205

Re: Consolidated Advisory Opinion 04-FC-114 and 04-FC-117; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Hunt:

This is in response to your formal complaints alleging that the Indiana Department of Correction ("IDOC") violated the Access to Public Records Act (APRA), I.C. §5-14-3, by failing to respond to your request for records within the time period set by statute, and by failing to provide the records requested. The IDOC has responded to your complaints, a copy of which is enclosed for your review. I have consolidated these complaints for purposes of this opinion. For the reasons set forth below, I find that the IDOC did not violate the Access to Public Records Act as alleged in your complaints.

BACKGROUND

On June 28, 2004, you mailed a written request for records to the IDOC which sought Mr. Cecil Davis' memoranda and email correspondence regarding shower, meal, and laundry policies for inmates in D-East Housing Unit. You received no response to your request. On July 15, 2004, we received your complaint alleging that the IDOC's failure to respond to your request constituted a denial of your record request. On July 16, 2004, I forwarded a copy of your complaint to the IDOC.

On July 1, 2004, you mailed a written request for records to the IDOC, which sought the following information: a copy of the bachelor degrees for numerous IDOC employees; the salary for those employees; the length of time those employees held a management position in correctional work; the first and last name of all individuals who applied for the Indiana State Police Superintendent's position; and the number of private sector candidates, holding at least a bachelor's degree, that the IDOC Commissioner interviewed for the Superintendent position. On July 7, 2004, Ms. Pam Pattison, Director of Media and Public Relations for the IDOC responded to your request. In that response, Ms. Pattison advised you that the IDOC would be reviewing your request and determining what documents could be provided. On July 19, 2004, we received

your complaint which alleged that Ms. Pattison refused to respond to your request. That same day, I forwarded a copy of your complaint to the IDOC. For purposes of these opinion, I have consolidated these complaints.

In response to your complaints, Ms. Pattison advised our office that the IDOC did not receive your June 28, 2004 request, and that the IDOC's response to your July 1, 2004 request was not a violation of the Access to Public Records Act.

ANALYSIS

Failure to Respond

The IDOC is a public agency for purposes of the APRA. A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. I.C. §5-14-3-9(b). A timely response to the request need not include production of the requested documents, or expressly decline to produce documents responsive to the request. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production.

When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. I.C. §5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b). However, a public agency must first receive a request in order to be responsible for a response under I.C. § 5-14-3-9. *Opinion of the Public Access Counselor* 03-FC-25.

The IDOC expressly denies receipt of your June 28, 2004 request. While you provide a copy of a record request dated June 28, 2004, there is no evidence establishing that the request was posted by you on that date or that it was subsequently received by the IDOC. Accordingly, I decline to find the IDOC in violation of the Access to Public Records Act for failing to timely respond to your request for records it alleges it never received.

Timely Response

The APRA does not specify a time for production or inspection of responsive records, but merely requires that records be produced within a reasonable time of the request. What constitutes a reasonable time will vary with the nature of the request and the office from which the records are requested. Production need not interfere with the regular business of the public agency. See *Opinions of the Public Access Counselor* 03-FC-122 and 03-FC-137.

The IDOC responded in writing to your July 1, 2004 request within the required 7 day response period, and advised you that they are reviewing your request and determining what documents they will be able to provide to you. This is not a denial of access to public records. Indeed, given that you request a potentially large volume of information which may include records that also contain information that is confidential and exempt from disclosure under I.C. §5-14-3-4, the IDOC's response to your request was appropriate, and does not violate the Access

to Public Records Act. I note that with the large number of documents that may potentially be produced, the IDOC is advised that it should consider discharging its duty to produce within a reasonable time by sending the documents as they become available rather than waiting until all documents are assembled before mailing them.

CONCLUSION

For the reasons set forth above, I find that the Indiana Department of Correction did not violate the Access to Public Records Act as alleged in your complaints.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Pam Pattison; w/out enclosures