

May 20, 2004

Mr. David Ditman, No. 951168  
Wabash Valley Correctional Facility  
P.O. Box 2222  
Carlisle, Indiana 47838-2222

*Re: 04-FC-71; Alleged Violation of the Access to Public Records Act by the  
Indiana Department of Correction, PEN Products*

Dear Mr. Ditman:

This is in response to your formal complaint alleging that PEN Products, a division of the Indiana Department of Correction (PEN Products) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it failed to timely respond to your request for records. PEN Products did not submit a written answer to your complaint. For the reasons set forth below, I find that PEN Products' failure to timely respond to your request for records violates the APRA.

#### BACKGROUND

According to your complaint, on March 15, 2004, you submitted a written request for records to PEN Products. Your request sought a copy of a contract for commissary services. On April 14, 2004, you prepared and submitted this complaint challenging PEN Products' failure to respond to your request.

#### ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily prescribed time period. 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. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b). Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates *receipt*

within three (3) days of the date of mailing. *Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).

PEN Products did not respond to the complaint. Accordingly, for purposes of this opinion, I assume that PEN Products received the request on March 18, 2004, and calculate the agency's response to have been due on March 25, 2004. Assuming receipt, PEN Product's failure to respond to your request on or before March 25, 2004, violates the APRA. Further, the agency's continuing failure to respond to the request and either aver that it does not have responsive documents or produce, subject to any applicable exemptions, any responsive documents that it does maintain, constitutes a continuing violation of the statute subject to enforcement and further action pursuant to Indiana Code IC 5-14-3-9.

#### CONCLUSION

For the reasons set forth above, I find that PEN Products' failure to timely respond to your request for records violates the APRA.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Ms. Nancy Broglin  
Ms. Pam Pattison