

January 26, 2000

Ms. Kelsey Kauffman
Post Office Box 420
Greencastle, IN 46135

Re: *Advisory Opinion 00-FC-01*; ;Denial of Access to Public Records by the Indiana Department of Correction.

Dear Ms. Kauffman:

This is in response to your formal complaint, which was received on January 3, 2000. You have alleged that the Indiana Department of Correction ("Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3, by failing to respond to a public records request¹ dated September 10, 1999. Mr. Edward Cohn, Commissioner of the Department, responded in writing to your complaint in a letter dated January 13, 2000. A copy of his response is enclosed for your reference. It is my opinion that the Department denied access to public records under the APRA when it failed to respond to your public records requests within seven (7) days of receipt as required under Indiana Code section 5-14-3-9 and this denial is actionable under Indiana Code section 5-14-3-9(d).

BACKGROUND

According to your complaint, on September 10, 1999, a public records request was made to the Department requesting copies of the following:

1. Employment histories for eighteen Department employees;
2. Certain settlement agreements between Department and employees;
3. An FBI deposition;
4. A list of employees who lived in staff housing at the State Farm in Putnamville during the 1990s;
5. The form employees sign regarding contact with the media;
6. The official regulations regarding employee contact with the media;
7. Regulations concerning the wearing or display of racist paraphrenalia;
8. A list of affirmative action complaints filed at State Farm;
9. A list of correctional facilities in Indiana that provide housing for employees and number of units; and
10. Departmental regulations governing staff who reside in Department housing.

On October 4, 1999, Jake Gross, Coordinator of the Peace and Justice Center, called the Department to

inquire about the status of this request. Ms. Pam Pattison, Executive Assistant at the Department, initially reported that the request had not been received. After a facsimile to Ms. Pattison, she confirmed that the request had been received several weeks prior. She assured Mr. Gross that a response would be provided within two (2) weeks.

On November 23, 1999, you contacted my Office about the failure of the Department to respond. I contacted Ms. Pattison and she referred me to Mr. Randall Koester, Chief Legal Counsel for the Department. I left a voice-mail message for Mr. Koester on November 30, 1999 but never received a return telephone call. You contacted my Office again on December 29, 1999 and, learning that I had no response from the Department, filed your formal complaint.

In his response, Mr. Cohn admitted that the Department did not respond to your request in a timely manner. The Department admits that it should have notified you that it would take more than the normal ten (10) business days to provide the information requested and does not assert any bases for the denial of access to these public records. Further, Mr. Cohn stated that the Department never intended to deny access to any of its public records. I also contacted Ms. Pattison by telephone and she confirmed that they are compiling the records in response to the request.

ANALYSIS

The public policy of the APRA states that "(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." Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it is my opinion that the Department failed to respond to your written request of September 10, 1999 within seven (7) days after receipt, which constituted a denial under Indiana Code section 5-14-3-9(b). If the Department had valid base for denial of access to these public records, those should have been communicated to you in a response under Indiana Code section 5-14-3-9.

CONCLUSION

It is my opinion that the Indiana Department of Correction failed to respond within the time period required under Indiana Code section 5-14-3-9(b) with respect to your public records request of September 10, 1999, which constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Edward Cohn, Commissioner
Indiana Department of Correction

¹ The public records request in question was made under the name "John Howard" by the members of the Peace and Justice Center .