

November 30, 1999

Ms. Kay Bell  
R.R. 1, Box 172  
Shoals, IN 47581

Re: *ADVISORY OPINION No. 99-FC-16:*  
Denial of Access to Public Records by the Indiana Department of Correction.

Dear Ms. Bell:

This is in response to your formal complaint, which was received on November 4, 1999. You have requested an opinion as to whether the Indiana Department of Correction (hereinafter, "Department,") violated the Access to Public Records Act, Indiana Code chapter 5-14-3 (hereinafter, "APRA,") with respect to your various requests for access to public records. The Department responded in two different letters, which were written by Staff Attorney Robert L. Bugher. Copies of his responses are enclosed for your reference. It is my opinion that, with respect to your request of July 29, 1999 and October 4, 1999, the Department denied access in violation of the APRA by failing to respond to your request within seven (7) days after receiving it.

### BACKGROUND

According to the facts presented in your complaint, you made the following written requests for access to public records to three different Department employees as follows:

1. July 29, 1999-Request to Mr. James E. Csenar, Classification Analyst.
2. October 4, 1999-Request to Mr. Robert L. Bugher, Staff Attorney.
3. No date provided-Request to Ms. Carolyn Heir, Educational Director.

As of the date of your complaint, November 4, 1999, you had received no response to any of the written requests submitted.

In his first response, which was dated November 5, 1999, and addressed to you, Mr. Bugher indicated that the documents requested in letters dated July 29, 1999 and October 4, 1999 had been compiled that the with the payment of the copying fee, the documents would be forwarded

to you.<sup>1</sup> In a letter dated November 12, 1999, Mr. Bugher further explained that Mr. Csenar had received your July 29, 1999 request, but had no experience in dealing with such requests. When Mr. Bugher received the October 4, 1999 request, he compiled the documents in response to both requests and contacted you in a letter dated November 5, 1999 informing you that records were available, and with the payment of the copying fee, the records would be forwarded to you.

There is no date stated for the request to Ms. Heir, but Mr. Bugher states in his response that Ms. Heir had responded to at least one request from you for copies of public records, but was not aware of an additional request for information. Mr. Bugher asks that you forward a copy of that letter to his attention so that it can be reviewed promptly.

Mr. Bugher apologized for the delay in the Department's responses to your requests. He noted that the failure to respond promptly to your requests was not willful or malicious, but can be accounted for by the Department's vast size, alternate duties, an unclear idea of what to produce and the sheer volume of records requested.

## 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  $\alpha$  5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code  $\alpha$  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  $\alpha$  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  $\alpha$  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  $\alpha$  5-14-3-9(d).

Under the facts presented, it is my opinion that the Department failed to respond to your written requests dated July 29, 1999 and October 4, 1999 within the time period specified under Indiana

Code section 5-14-3-9(b), which constituted denials under the APRA. The Department has since produced many of the public records requested to you. While I understand the competing responsibilities of the Department, the APRA merely requires a response-a communication to the requestor concerning the request. It is not clear that the Department received your request to Ms. Heir for GED information, therefore, I recommend that you forward that request to Mr. Bugher, as he directed, for review and response.

### 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 requests of July 29, 1999 and October 4, 1999.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Robert Bugher, IDOC

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<sup>1</sup> Mr. Bugher made reference in this letter to your October 24, 1999 request to the Department for additional public records. Your complaint does not reference this request, therefore, it will not be considered in this opinion.