



STATE OF INDIANA

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November 14, 2008

Bobby Peck
DOC #865349
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 08-FC-221; Alleged Violation of the Access to Public Records Act by the Indiana State Personnel Department

Dear Mr. Peck:

This advisory opinion is in response to your formal complaint alleging the Indiana State Personnel Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. The Department's response to the complaint is enclosed for your reference. It is my opinion the Department did not violate the APRA by not responding to a request it did not receive.

BACKGROUND

You allege that on September 29, 2008 you submitted a request to the Department for a copy of a roster of the employees of the Wabash Valley Correctional Facility. You filed this complaint on October 15, alleging you had not received a response from the Department.

The Department responded to the complaint by electronic mail message dated October 21 from attorney Keith Beesley. The Department contends that none of the individuals responsible for handling such correspondence have received a copy of your September 29 request. Further, the Department indicates it would deny access to the roster of employees based on the exceptions to disclosure found in I.C. § 5-14-3-4(b)(8) and I.C. § 5-14-3-4(b)(23).

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 Department 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 Department 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).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Department asserts the office has no record of having received your request. If the Department did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Department did not receive your request, it did not violate the APRA by not responding to it.

Regarding the substance of the request, it is my understanding based on the Department's assertion and based on your mailing address that you are confined in a penal institution as the result of the conviction for a crime. As such, you are an "offender" for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure for information related to employees of correctional facilities, specifically excepting the following:

Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) the victim of a crime; or

(iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23).

To the extent you are requesting personal information relating to a correctional officer or family member of a correctional officer or records that concern or could affect the facility's security, the Department may deny access to those records. The Department bears the burden of proof to sustain the denial (*See* I.C. § 5-14-3-1), and in my opinion the Department will be able to bear that burden here.

Further, the APRA provides a discretionary exception to disclosure for most personnel file information. While certain personnel file information must be disclosed, the exception provides that the subdivision requiring such disclosure "does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name." I.C. § 5-14-3-4(b)(8). In other words, the Department is not required to provide you with the requested information because you have requested the information generally on all employees of the facility.

As such, it is my opinion that even if the Department had received your request, the Department could have denied the request on the basis of I.C. § 5-14-3-4(b)(23) and I.C. § 5-14-3-4(b)(8).

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Keith Beesley, Indiana State Personnel Department