
OPINION OF THE PUBLIC ACCESS COUNSELOR

LAKESHA L. NORINGTON,¹
Complainant,

v.

INDIANA DEPARTMENT OF CORRECTION,
Respondent.

Formal Complaint No.
20-FC-4

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana Department of Correction (“DOC”) violated the Access to Public Records Act.² Angie Heishman, administrative assistant at the Miami Correctional Facility, filed an answer to on behalf of DOC with this office. In ac-

¹ The complainant, whose legal name is Shawntrell Marcel Norington, was born a male but identifies as a female and uses female pronouns.

² Ind. Code §§ 5-14-3-1 to -10

cordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 13, 2020.

BACKGROUND

This case involves a dispute over the access to records pertaining to the Food Services branch of the Miami Correctional Facility.

On September 23, 2019, Lakesha L. Norington (“Complainant”) filed a public records request with the DOC requesting the following:

(A) The Food Services enhanced meal dietary menus, master menu, alternative and substitute menus that shows how and with what, on 9-22-19 and prior to and after, meals were to be enhanced and served. (Please also produce photographic enhanced meals to visually show how each meal is to be enhanced)

(B) The Food Services employment contract that was binding on all Food Service personnel of the Miami Correctional Facility on 9-22-19.

Norington asserts that DOC did not respond to the request. On October 11, 2019, Norington followed up with the Miami Correctional Facility’s litigation liaison about the request. In response, the liaison contended that she did not recall receiving the request but encouraged Norington to resend the request to the liaison’s attention. Norington re-submitted the request on November 9, 2019.

On January 13, 2020, Norington filed the complaint after the DOC failed to respond to the request for records.

On January 29, 2020, DOC filed an answer to Norington’s complaint through Angie Heishman. Heishman simply states that Norington is responsible for paying the cost of the requested documents and has insufficient funds to complete this request at this time.

It is unclear, based on the letter, whether DOC acknowledged receiving the request or informed Norington of the lack the funds to cover the cost of copies.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“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 Indiana Department of Correction (“DOC”) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the DOC’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists

other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Norington's request

The crux of Norington's complaint is that DOC's failure to permit inspection of the requested records constitutes an improper denial of access under APRA. In response, the agency argues that Norington is responsible for paying the cost of the documents and has insufficient funds to complete the request.

Under APRA, an agency may not charge a fee for inspecting a public record. Ind. Code § 5-14-3-8(b)(1). At the same time, APRA authorizes a state agency to charge a fee for copying documents. Ind. Code § 5-14-3-8(c).

Here, Norington requested to inspect the records identified in the request. DOC argues that Norington is responsible for paying for the cost of the requested records and lacks the funds to do so.

It is true that APRA does not contain any provision mandating free copies of public records for indigent, incarcerated persons. On the other hand, it does prohibit an agency from charging a fee for inspecting a public record. In this case, Norington requested to opportunity to inspect public records.

The Indiana Court of Appeals observed that an individual's "status as a prisoner greatly frustrates [the] right [to inspect records]." *Smith v. State*, 873 N.E.2d 197, 201 (Ind. Ct. App. 2007).

In *Smith*, the court acknowledged that practicality is implicit in the right to inspect and copy public records under APRA. 873 N.E.2d at 201. In concluding the agency did not violate APRA, the court observed that:

...it is simply not practicable for Smith either (1) to be brought to the location of the records so that he can inspect them on location or (2) to have the records brought to him in the DOC so that he can inspect them while imprisoned.

Id. In other words, a requester's status as a DOC prisoner can hobble their right to simply inspect (i.e., not copy) public records if it is not practicable for the agency to bring the records to the offender or vice versa.

Granted, DOC does not argue that it is impracticable to bring the requested records to Norington for inspection or vice versa. If that is the case, this office recommends DOC permit inspection of the records without a fee.

On the other hand, if it is not practicable to bring the records to Norington for inspection or vice versa, Norington is obligated to pay for the copy fees prior to receiving the records.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana Department of Correction provide the requested records, if practicable, for inspection without assessing a fee to the requester. If not, Norington must pay the copy fee prior to receiving the records in accordance with APRA.



Luke H. Britt
Public Access Counselor