

February 6, 2006

Clyde Piggie  
#933044  
Pendleton Correctional Facility  
P.O. Box 30  
Pendleton, IN 46064

*Re: Formal Complaint 06-FC-10; Alleged Violation of the Access to Public Records Act by the Miami Correctional Facility*

Dear Mr. Piggie:

This is in response to your formal complaint alleging that the Miami Correctional Facility (“Facility”) violated the Access to Public Records Act by failing to respond to your request for records.

#### BACKGROUND

You have made three discrete requests for records the subject of your formal complaint, filed with the Office of the Public Access Counselor on January 10, 2006. You sent requests for specific personnel file information regarding various individuals to the Facility on November 24, 2005, November 29, 2005, and December 20, 2005. You allege that you have received no response to these requests.

I sent a copy of your complaint to the Facility. I received a letter from Superintendent John R. VanNatta, a copy of which I enclose for your reference. Mr. VanNatta stated that “In response to his complaint, the Miami Correctional Facility did provide Offender Piggie the staff information he requested.” The Facility maintains that it has complied appropriately. In addition, it does not maintain records of the medical staff.

#### ANALYSIS

A person who wishes to file a complaint with the public access counselor regarding a denial of a right under IC 5-14-3 must file the complaint within 30 days of the denial. IC 5-14-5-7(a). The November requests for records were deemed denied more than 30 days prior to your

filing the formal complaint; you have filed a timely complaint only with respect to the December 20 request. However, I may issue an informal inquiry response at any time; therefore, I am incorporating an informal inquiry response in this formal advisory opinion. Also, your request for priority status was denied because you alleged none of the circumstances for which priority status may be granted under 62 IAC 1-1-3. *See* IC 5-14-5-10. Therefore, this advisory opinion is issued within 30 days of the date you filed the complaint.

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). The Facility is a public agency under the APRA. IC 5-14-3-2(l)(1). If a public agency receives a request for a record via mail, it must respond to the request within seven (7) days of receipt of the request. IC 5-14-3-9(b). If the public agency does not maintain a record, it should so inform the requester. A public agency is not required to produce a record that it does not maintain merely to satisfy a request for information.

The personnel files of public employees may not be disclosed in the discretion of the public agency. IC 5-14-3-4(b)(8). However, certain information from a personnel file of a current or former public employee must be disclosed. IC 5-14-3-4(b)(8)(A)-(C). The information that you have sought regarding various individuals is part of the required disclosures from a personnel file. According to the Facility, the records regarding the medical staff that you name are not maintained by the Facility; hence, the Facility has not violated the APRA in not producing those records. However, if the Facility did not timely respond to your requests for these records, it violated the Access to Public Records Act.

The Facility states that it has otherwise complied with your requests for certain information from the personnel files of employees of the Miami Correctional Facility. If you believe that the Facility has not complied, you may file a lawsuit in superior court to compel the agency to disclose the record or records. *See* IC 5-14-3-9(e).

## CONCLUSION

The Miami Correctional Facility was required to respond to your requests for records within seven days, or the request is deemed denied under the Access to Public Records Act. The Facility was not required to disclose records it does not maintain.

Sincerely,

Karen Davis  
Public Access Counselor

cc: John R. VanNatta