



STATE OF INDIANA

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May 26, 2011

Mr. Rocky M. Shroyer
DOC # 956193
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 11-FC-110; Alleged Violation of the Access to Public Records Act by the Pendleton Correctional Facility

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Pendleton Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Facility's response is enclosed for your reference.

BACKGROUND

In your complaints, you allege that the Facility denied your request for access to the names and ranks of "all Indiana Department of Corrections employees and contractual staff who were disciplined and terminated as a result of testing positive for drug use during staff drug testing conducted on August 30, 2010 thru [sic] September 2, 2010. [sic] at [the Facility]." You also requested access to press releases for certain incidents that occurred at the Facility. The Facility produced those records, but redacted names of inmates due to concerns about the security of the Facility.

In response to your complaint, Facility Administrative Assistant David Barr states that the Facility denied you access to the above records and redacted information based on Ind. Code § 5-14-3-4(b)(23) and 210 Ind. Admin Code 1-6-2(3)(E). He also notes that when the Facility requested clarification regarding your request for press releases of "incidents," you replied that you wanted copies of offender payroll records showing names of offenders and how much money was being placed in their trust account. Mr. Barr states that releasing such information to you or other offenders could jeopardize the security of the Facility, so the Facility denied your request based on 210 I.A.C. 1-6-2(3)(E). Specifically, Mr. Barr states that the Facility is concerned that releasing such information "would put the Facility at risk, due to the [fact that the] information gleaned

from it could cause an increase in criminal activity (such as extortion) inside the walls of the Facility.”

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency’s regular business hours, except as provided in section 4 of the APRA. I.C. § 5-14-3-3(a). The Facility is a public agency under the APRA. I.C. §5-14-3-2(1)(2)(C). If a public agency receives a request in writing, the public agency may only deny the request if the denial is issued in writing and includes the specific exemption or exemptions authorizing the withholding of the record, and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). A public agency bears the burden of showing that a record is exempt under the APRA. I.C. § 5-14-3-9(f).

Mr. Barr denied your request, in part, based on 210 I.A.C. 1-6-2(C), which classifies as confidential information that, if released, might result in physical harm to a person. The APRA provides that a public agency may not disclose records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” I.C. § 5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), the Department of Correction (“DOC”) DOC may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC has classified several categories of documents as “confidential information,” including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. 210 I.A.C. 1-6-2(3)(A), (C), (E). I agree with Mr. Barr that releasing information regarding the amount of funds in inmates’ trust fund accounts could lead to increased security problems within the Facility. Therefore, the DOC did not violate the APRA by denying your request. *See also Opinion of the Public Access Counselor 05-FC-40.*

Moreover, if you are confined to a penal institution as the result of a conviction of a crime, 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 relating to correctional officers and for information that could affect the security of a jail or correctional facility:

- 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). Thus, the Facility acts within its discretion to withhold records that could affect the concern of a correctional facility and relate to correctional officers.

Consequently, the Facility did not violate the APRA by withholding records regarding the identities of correctional employees on that basis.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial "A".

Andrew J. Kossack
Public Access Counselor

cc: David W. Barr