



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 24, 2015

Ms. Lakesha L. Norington
5501 South, 1100 West
Westville, Indiana 46391

Re: Formal Complaint 15-FC-72, 106 & 120 (consolidated); Alleged Violation of the Access to Public Records Act and the Open Door Law by the Indiana Department of Corrections

Dear Ms. Norington,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Corrections ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* DOC has issued a response via Mr. John Schrader, Litigation Liaison. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 25, 2015.

BACKGROUND

Your complaint(s) dated February 19, 2015 and March 16, 2015 alleges the DOC violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On February 5, 2015, you submitted to the DOC a public records request seeking all the records and files detailing the names of all persons and organizations which pay subsidies to the Westville Control Unit and Westville Correctional Facility ("Westville"), as well as all records detailing the money provided to Westville. You also requested all records detailing Westville's Food Services Department, resident meals and all monies provided to Food services.

You supplemented your request asking for all documents which detail the type of healthcare coverage and insurance you are covered by, all documents detailing the housing and care of transgender residents and a complete list of the names and titles of facility staff at Westville.

On February 11, 2015, DOC denied the public access request on the grounds the requests were overly broad and failed to specify exactly what documents were requested. Additionally, it is alleged you owe several thousand dollars in filing fees and DOC would not provide documents pursuant to a clarified request until you have cleared your obligations.

On February 9, 2015, additional requests were made to Westville, asking for records on Westville's layout and electronic devices used in Westville. The requests also asked for notifications of all meetings open to the public at Westville, records detailing Westville's water systems and records detailing all sanctions, penalties and injunctions filed against Westville. You allege the denial of the second request also led to a violation of the ODL because Westville failed to provide you notice of a meeting.

On February 19, 2015, Mr. Schrader denied the second set of requests as overly broad and cited the filing fees owed.

On March 2, 2015, Mr. Schrader responded to the first complaint, Formal Complaint 15-FC-72. He affirmed Westville's stance on the overly broad nature of your first request. Additionally, the request about "treatment of transgender patients" in the second request was also considered overly broad. He also notes inmates are not provided health insurance by the state. Finally, the request for the names and titles of staff could not be fulfilled because Westville does not have a document to meet those criteria.

On March 24, 2015, Mr. Schrader responded to second complaint, Formal Complaint 15-FC-106. In addition to the overly broad nature of the requests, he notes some of the documentation request could be considered a security concern for Westville and therefore is exempt under Indiana law.

You made a substantively similar request to the Office of the Governor on February 18, 2015; however, the Governor's Office is not the custodian of the records you seek. Each separate agency is the steward of its own records. Therefore, your grievance against the Governor's Office will not be addressed.

ANALYSIS

The public policy of the APRA states that "a (p)roviding person 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." See Ind. Code § 5-14-3-1. The DOC and Westville are public agencies for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the DOC's and Westville's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

With regard to your first complaint, Mr. Schrader denied your request as being overly broad. The APRA requires a request for inspection or copying identify “with reasonable particularity the record being requested.” Ind. Code § 5-14-3-3(a). Reasonable particularity” is not defined in the APRA, but here you appear to have made several requests for documents with several possible interpretations. The burden falls upon the requestor to meet the standards of APRA. Because it is impossible for Westville to determine which documents are requested, failure to provided documents is not an APRA violation.

While particularity is not defined within APRA, this Office has held when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity which appears to be the case here. You have made several public records requests, requesting the entirety of Westville’s financial statements, the entirety of Westville’s healthcare documents, among other broad requests. The same analysis applies to your request to the Governor’s Office. See also, generally, *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012).

Additionally, this has held on numerous occasions APRA does not require a public agency to create a new record in order to satisfy a public records request. Therefore, your request for staff listings is not subject to a public record request because the record requested does not exist. I also agree with DOC’s reading of Ind. Code § 5-14-3-4(b)(23)(B) and accepts the assertion some of the requested materials would potentially present a security concern. Inmate access to facility layout and electronic monitoring systems is clearly a security concern.

I disagree; however, with DOC’s assertion your legal financial obligations prevent you from seeking access to records. Please be advised there is no waiver of fees provisions for indigent public access requesters, however. If you were to narrow the scope of your request and the DOC would be able to identify the records in question, you would need to remit the copy fee for those records.

With regards to your ODL violation, you allege that failure to provide documents led to a failure to provide notice of a public meeting. However, you have neglected to identify any public meetings from which you are excluded or any public meetings necessitating notice.

CONCLUSION

For the foregoing reasons, it the Opinion of the Public Access Counselor the Indiana Department of Correction did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Schrader