



# STATE OF INDIANA

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## OPINION OF THE PUBLIC ACCESS COUNSELOR

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JESSICA A. GIBSON, )

Complainant )

v. )

DEPARTMENT OF CORRECTION )

Respondent )

17-FC-108

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### ADVISORY OPINION

June 15, 2017

This advisory opinion is in response to the formal complaint alleging the Indiana Department of Correction (“DOC”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The DOC has responded via Robert D. Bugher, Chief Counsel of the DOC. The response is enclosed for review. Pursuant to Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 5, 2017.

### BACKGROUND

The formal complaint dated May 4, 2017, alleges the DOC violated the APRA by denying access to records requested.

Around March 20, 2017, the Complainant requested records from DOC including job descriptions for leadership personnel at the agency. My office does not have a copy of the original request made by Ms. Gibson. The DOC provided her with the requested records obtained from the State Personnel Department (“SPD”), except for the job descriptions because there were none on file with the DOC or the SPD. Subsequent emails between the DOC and the Complainant revealed that Ms. Gibson has filed a lawsuit in federal court against employees of the SPD and the former DOC Commissioner.



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## ANALYSIS

The public policy of the 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.” Indiana Code § 5-14-3-1. The Indiana Department of Correction is a public agency for the purposes of the APRA. *See* Indiana Code § 5-14-3-2(n). Accordingly, any person has the right to inspect and copy the DOC’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Indiana Code § 5-14-3-3(a).

The General Assembly has precluded the Public Access Counselor from issuing an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under the Open Door Law (ODL) and APRA. Ind. Code § 5-14-4-10(6). The Complainant’s lawsuit, however, has been filed in federal court, alleging violations of federal laws including Title VII of the Civil Rights Act and the Family Medical Leave Act. She has not alleged any violations of the APRA or ODL in her complaint to the court. Thus, it is appropriate for me to issue an advisory opinion on Ms. Gibson’s allegation that DOC violated the APRA.

If the job descriptions requested by the Complainant existed, they would be disclosable. The DOC, however, cannot provide records that do not exist. Neither the DOC nor the SPD have copies of the job descriptions for the specified employees. Even so, if either the DOC or the SPD have generic versions of job descriptions for those positions, or similar positions in other agencies, I encourage the DOC to send those to the Complainant. Of course, not all state employees will have job descriptions on file with their agencies. In some cases, the duties for positions are defined in statutes. For example, the duties for my position are found in Indiana Code section 5-14-5. The retention schedule for personnel files on file with the SPD (87-200) makes no mention of job descriptions in the list of common contents of personnel files. Still, whether the SPD or the DOC should have copies of job descriptions on file is outside the scope of my Office.

In the Complainant’s correspondence with the DOC following her initial request, the Complainant asks follow-up questions in her email regarding the requested job descriptions to the DOC that do not qualify as records requests. However, these questions may be relevant to her lawsuit. I suggest that the Complainant avail herself of the discovery tools available to her while pursuing her complaint in federal court.



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## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana Department of Correction has not violated the Access to Public Records Act.

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "LHB", written over a light gray rectangular background.

Public Access Counselor

Cc: Robert D. Bugher