

September 10, 2003

Michael Hunt 961894
Wabash Valley Correctional Facility
Cell 708-A-West
P.O. Box 1111
Carlisle, Indiana 47838-1111

Re: *Advisory Opinion 03-FC-71*; Alleged Denial of Access to Public Records by the
Indiana Department of Correction, Wabash Valley Correctional Facility

Dear Mr. Hunt:

This is in response to your formal complaint, which was received on August 12, 2003. You have alleged that the Indiana Department of Correction, Wabash Valley Correctional Facility ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department has denied you access to records of meals eaten by but not paid for by state employees. I discussed this matter with Ms. Pam Pattison, Department of Correction on August 12, 2003. For the reasons set forth below, it is my opinion that the Department did not deny you access to public records in violation of the APRA.

BACKGROUND

According to your complaint, you requested an opportunity to obtain a copy of records of meals eaten by but not paid for by state employees, specifically guards at Wabash Valley Correctional Facility. You enclosed with your complaint a memorandum dated July 10, 2003 from Administrative Assistant Rich Larsen, which acknowledged receipt of your Public Records Request on July 9, 2003. You also enclosed a memorandum dated August 6, 2003 from Rich Larsen indicating that the information you requested were ready for your collection upon payment of One Dollar and Ten Cents (\$1.10) for copying costs at Ten Cents (\$0.10) per page.

You allege that the Department violated the APRA by not allowing you to inspect the documents before paying the copying fees, and by not responding within seven (7) days.

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." Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

You alleged in your complaint that the Department violated the APRA by failing to respond to your request within seven (7) days of receipt. A public agency is required to communicate with the requestor within seven (7) days of his request as to the substance of his request, but there is no set time for production. See, Ind. Code §5-14-3-9(a). While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection. Based upon the documents you provided it is clear that Mr. Larsen did respond to your public records request in a letter July 10, 2003. In his letter Mr. Larsen advised you that the records you requested were being compiled and would be provided as soon as possible. Therefore, it is my opinion that you were not denied access to public records in violation of the APRA.

In your complaint you stated that you wanted to inspect the records you requested prior to paying for the copies. However, since you did not include a copy of your request and its unclear from your complaint whether you requested the opportunity to inspect the records I cannot determine whether you have been improperly denied the right to inspect the records. It should be noted that Indiana Code section 11-11-6-1 allows the Department to place certain restrictions on committed persons, which may eliminate your right to inspect public records.

CONCLUSION

It is my opinion that the Indiana Department of Correction, Wabash Valley Correctional Facility did not violate the Access to Public Records Act by failing to respond to public records request. Mr. Larsen responded to your request advising you that the records were being compiled and would be provided as soon as possible.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Cc: Ms. Pam Pattison, Indiana Department of Correction