

April 5, 2004

Mr. Richard K. Corbin, No. 975153
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, Indiana 47838

*Re: Formal Complaint 04-FC-37; Alleged Denial of Access to Public Records
by the Indiana State Prison*

Dear Mr. Corbin:

This is in response to your formal complaint alleging that the Indiana State Prison (Prison) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it failed to timely produce records or respond in substance to your February 12, 2004, requests for records. A copy of the Prison's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Prison did not violate the APRA.

BACKGROUND

On February 12, 2004, you mailed three written requests for records to the Prison. Your requests sought disclosable personnel file information regarding three employees. The prison responded in a timely manner on February 16, 2004, acknowledging receipt of your request and notifying you that a further response would be forthcoming.¹ When no further response was forthcoming by March 8, 2004, you brought the instant complaint. The Prison responds by providing a copy of a letter to you dated March 16, 2004, indicating that in the 30 days that your request was pending the public agency reviewed its files and identified four pages of non-confidential documents responsive to your

¹ While this response was timely and promised further review and response, the burden to produce documents or to otherwise provide a substantive answer to a request for records remains with the public agency. For future reference, an initial response acknowledging a request should set forth a date certain when production or other substantive response will follow.

request. That letter further stated that the Prison would produce those documents upon receipt of your payment for those copies.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. When a public records request is made in writing and mailed to the public agency, the public agency is required to respond to that request within seven days of receipt of the request. IC 5-14-3-9(b). A timely response to the request does not mean that the public agency must produce or expressly decline to produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. Production or inspection of the records must occur within a reasonable time of the request. There are practical reasons for such a rule. A public agency may be able to produce public records immediately in some cases, but more time may be required for production when records are not in a central repository, are archived off-site, include information that may require counsel or other review for confidentiality, or include disclosable and nondisclosable information that the public agency must separate for purposes of producing what is disclosable. The effect of interpreting Indiana Code 5-14-3-9 to require public agencies to produce records within a specific period of time would have the effect, in some cases, of requiring public agencies to stop activity on all other matters in order to provide the records requested. While providing information is an essential function of public agencies, the APRA also specifically provides that public agencies shall regulate any material interference with the regular functions or duties of their offices. IC 5-14-3-1; IC 5-14-3-7(a).

Here, the Prison responded to your request immediately upon receipt, and that response promised review of the request and production of any non-confidential records. While that response also should have provided you with a date certain for production or further response (*see* Note 1), it was timely and otherwise in compliance with the APRA. The Prison's subsequent response notifying you that the responsive documents were available for production came less than 30 days after it received your request. I do not find this period of time for production to be unreasonable under these facts. Your request sought personnel file information for three employees. Personnel file information is generally nondisclosable at the discretion of the public agency (*see* IC 5-14-3-4(b)(8)), and the initial response further indicated that some internal review of any responsive records would be required to determine what records or portions of those records could be disclosed for your review and inspection. Given the nature of the records sought (personnel file information) and the fact that such records were being sought for multiple employees, I find that the Prison's less than 30-day delay in making the non-confidential portions of those records available to you upon your payment of the copy fee was reasonable and did not constitute a constructive denial in violation of the APRA.

CONCLUSION

For the reasons set forth above, I find that the Prison did not violate the APRA in failing to produce documents or otherwise respond to your request prior to the time you filed your complaint.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Barry Nothstine
Ms. Pam Pattison