

July 29, 2005

Adrian L. Broome
D.O.C. # 957185
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838-2222

Re: Formal Complaint 05-FC-129; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Broome:

This is in response to your formal complaint alleging that the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") by failing to provide you with the requested records.

BACKGROUND

Your formal complaint, filed with the Office of the Public Access Counselor on June 29, 2005, was assigned formal complaint # 05-FC-129. On May 25, 2005 this office received two requests for records from you. The requests were for records of the Wabash Valley Correctional Facility. I returned the requests to you and informed you that the requests must be made directly to the agency maintaining those records rather than this office. It appears from your complaint that you then forwarded those two requests to the Facility. When you forwarded the requests to the Facility you did not amend the record request form to indicate that it was now addressed to the Facility rather than the Public Access Counselor.

In your formal complaint, you indicated by circling "Copy Fee" on the complaint form, that your complaint concerns copying fees. You stated in both of your requests that you were indigent. Additionally, you provided the Facility's response to your request. The response stated that you must make requests on the proper form available to you in the library and that the request must be sent and addressed to the facility public information officer. Additionally, you were informed that you did not have any funds in your account at that time. Finally, the Facility indicated that it is not obligated to provide you with copies free of charge.

Mr. Rich Larsen, Public Information Officer for the Facility, responded to your formal complaint by letter dated July 5, 2005. Mr. Larsen stated that your request must be sent and addressed to the facility public information officer per "IC 5-14-1 and Department of Correction policy 00-03-101." He also indicated that you had no funds in your account to pay for any copies generated by your requests and that the Facility is under no obligation to provide you with copies free of charge per IC 5-14-3-8.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). The Facility is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(1)(1).

Copy Fee

Under the APRA, a state agency may charge a uniform copying fee that is established by the Indiana Department of Administration ("IDOA"). IC 5-14-3-8(c). The IDOA has established a \$.10 per page cost for copies. The Facility is part of a state agency and is permitted to charge you \$.10 per page. IC 5-14-3-8(c). The Facility may also require that you pay for copying costs in advance of receiving the copies. IC 5-14-3-8(e). The facility did not deny your request for records on the basis of copying fees, but merely informed you that there would be a fee and that you did not have the funds to cover such cost. Since the Facility is an agency that is in the unique position of being custodian of your funds, I do not find it to be a violation of APRA to inform you of the amount in your account.

Additionally, you have claimed indigency in your requests for records. I assume that to mean that you believe you should not have to pay for copies of the requested documents. There are instances when a court will issue an order of indigency that would provide that an incarcerated person would be entitled to copies of certain public records at no charge. In the case of your request to the Facility, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge from that agency. Merely alleging indigency or showing that you were adjudged indigent in a proceeding does not mean that a public agency must waive the copying fee. You must obtain a court order stating that you are indigent for purposes of obtaining records under APRA.

Denial of Request based on Incorrect Request Form

You did not clearly raise the issue of the denial of your request because it was on the wrong form. However, I will address the issue of whether the agency may require you to fill out the appropriate request form to obtain records. Public agencies have the discretion to require that requests for public records be made on a form provided by the agency. IC 5-14-3-3(a)(2). Mr. Larsen explained to you in his letter of June 2, 2005 that you had not used the proper request for access to public record form in making your request. He also advised you that the form is available to you in the library. It is not a violation of the APRA to require that a requestor use the specified form in making requests for records. Further, it was within your power to obtain the correct form and submit the request in the proper manner, and you may still do so.

CONCLUSION

For the foregoing reasons, I find that the Wabash Valley Correctional Facility did not violate the Access to Public Records Act by informing you that there is a charge for the requested copies, refusing to waive the copying fee, and informing you that you do not currently have any funds in your account to pay for those copies. Additionally, the Wabash Valley Correctional Facility did not violate the Access to Public Records Act when it required you to use the appropriate request form.

Sincerely,

Karen Davis
Public Access Counselor

cc: Rich Larsen