



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

## PUBLIC ACCESS COUNSELOR

402 West Washington Street, Room W460  
Indianapolis, IN 46204-2745  
Telephone: (317) 233-9435  
1-800-228-6013  
FAX: (317) 233-3091  
[www.IN.gov/pac](http://www.IN.gov/pac)

November 16, 2005

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

*Re: Formal Complaint 05-FC-214; 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 ("WVCF") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records.

### BACKGROUND

You allege that you filed a written request for public records with the WVCF on September 27, 2005. You state that as of October 13, 2005 you had not received a response to your request from the WVCF. Therefore, you filed this formal complaint with the Office of the Public Access Counselor on October 17, 2005.

Mr. Rich Larsen responded to your formal complaint on behalf of the WVCF by letter dated October 19, 2005. A copy of that letter is enclosed for your reference. Mr. Larsen indicated that he did not receive your request for records. He stated that he has informed you on numerous occasions that a public record request must be addressed and sent to the facility public information officer on the form provided by the facility. Additionally, Mr. Larsen noted that, in your formal complaint, you stated that your request was for records of the Sullivan Hospital. He asserts that the WVCF cannot provide those documents. Mr. Larsen also indicated that you do not have the funds in your account to pay for any copies generated by your requests for records. Finally, Mr. Larsen stated that you have been informed that you may request a review of your medical packet by submitting the appropriate request to the facility medical department.

### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-

9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

A request for inspection and copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

IC 5-14-3-3(a).

The WVCF is a public agency for purposes of the APRA. IC 5-14-3-2(1)(1). Therefore, the WVCF is required to respond to a request for public records within seven days of receipt of the request. Mr. Larsen indicated that he did not receive your request. If the WVCF did not receive your request for records it did not have a duty to respond; therefore, the WVCF did not violate the Access to Public Records Act when it did not respond to your request.

Mr. Larsen indicated that you have been well-informed that your requests for public records of the WVCF must be sent to the facility public information officer and must be on the correct form.

In a similar complaint the Public Access Counselor wrote:

Because you are subject to rules and regulations of the Facility, in my opinion it is not a denial of access for the Facility to require you to submit your request for records in a certain manner and to a certain person. According to long-standing Facility policy, which you have been made aware of, you are required to submit a request for records to the Facility's public information officer on a specific form if you are requesting a record from any department of the Facility. The request will be processed, and any disclosable records would be made available to you. I recommend that you submit your request to Rich Larsen in accordance with Facility policy.

*Opinion of the Public Access Counselor 05-FC-59.* If you have not submitted your request to the WVCF in the manner required you should do so in order to insure that your request is received.

Mr. Larsen also states that you have previously been informed of the procedure that would allow you to inspect your "medical packet" that is maintained by the WVCF medical department. Your request must be directed to the facility medical department and must be specific in terms of the information you seek including the time frame for the records. Ordinarily, an agency may not decline to answer a request for records because it must be directed to another person. However, if the WVCF has an established procedure for making the request and you have been adequately informed of that procedure, the WVCF may require you to follow the correct procedure. You should avail yourself of those procedures.

Additionally, Mr. Larsen indicated that your request, as stated in your formal complaint, was for documents from Sullivan Hospital. He stated that the WVCF cannot provide those records. Mr. Larsen's response is somewhat ambiguous. If the reason that the WVCF cannot provide those records to you is that it does not maintain those records then the WVCF should inform you that it does not maintain them. However, if the WVCF does maintain those records, and intends to deny your request for those records, then it must provide you with the basis for denying those records when it receives your request.

Although you did not raise the issue, Mr. Larsen asserts that you do not have funds in your account to pay for any copies generated by any requests that are actually received by him. He correctly notes that his office is under no obligation to provide copies free of charge per IC 5-14-3-8(c). It is not a violation of the APRA for the WVCF to inform you of the status of your account when responding to a request for records. The WVCF may not deny your request based solely on the belief that you do not have the ability to pay for copies; however, the WVCF may require that you pay for copying costs in advance of receiving the copies. IC 5-14-3-8(e).

#### CONCLUSION

For the foregoing reasons, I find that if the Wabash Valley Correctional Facility did not receive your request for records, it did not violate the Access to Public Records Act when it did not respond to the request.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Rich Larsen