

January 19, 2006

Mr. Chester Wilms  
#943594  
Wabash Valley Correctional Facility  
P.O. Box 2222  
Carlisle, IN 47838

*Re: Formal Complaint 05-FC-262; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility*

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act by failing to give you a record. I find that the Facility did not violate the Access to Public Records Act.

#### BACKGROUND

You sent a request for records on November 22, 2005 to the Facility. It is difficult for me to discern what you requested, but it appears that your request is related to your complaint regarding your bunk assignments. It also appears to me that you are seeking documentation of the history of where you were bunked since you arrived at Level 3 of the Facility. In your formal complaint with the Public Access Counselor, filed December 20, 2005, you state that you have not received the records you requested. You stated that you were told that you do not have money in your account to pay for copy fees. You also wrote in your complaint that you "are entitled to a quote price of how much at a reasonable price under IC 5-14-3-8(G) and (D)."

I sent a copy of your complaint to Rich Larsen, Administrative Assistant at the Facility. Mr. Larsen sent me a letter dated December 28, which I enclose for your reference. He told me that you had a zero balance in your account at the time of your request. He also shared with me his timely response to you regarding your record request. Mr. Larsen believes that your request is not a request for a record, but a request that the Facility do research. The Facility would not do research to satisfy your curiosity. Mr. Larsen also told you that you have no funds in your

account to pay for copies, and the Facility is under no obligation to provide copies of records free of charge. Mr. Larsen stated that your bed placement issues would be resolved by your counselor.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). A request for a record must identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). The APRA does not require a public agency to create a record, or conduct research to compile any record, just to satisfy a request for documentation of particular facts. If no record already exists that would document your bunk placement over a period of time, the Facility is under no obligation to create a record to satisfy your request for records. From the information provided by the Facility, it appears that your request would involve creating a record. The Facility did not violate the APRA when it refused to undertake to create a paper trail of your bunk placements within the Facility. Therefore, the Facility did not violate the APRA.

I would counsel the Facility to make more clear when it does not maintain a record. Merely stating that the Facility is not required to conduct a research project only hints that a record does not exist. It would be better practice, and more valuable information to the requester, to understand precisely why the Facility is not forthcoming with a record.

You also raise an issue regarding copy fees. Under the APRA, a public agency may charge a copy fee. A state agency may charge the per-page charge set by the Indiana Department of Administration, or \$.10 per page for copies. IC 5-14-3-8(c). The Facility is part of a state agency. Therefore, the Facility may charge \$.10 per page for copies of any non-exempt records that it maintains. A public agency may require that the payment for copying costs be made in advance. IC 5-14-3-8(e). If the Facility has identified disclosable records which you have requested, it is my opinion that the Facility must tell you the per-page cost for the copies and an estimate of the number of pages, even if you lack sufficient funds in your account at the time of your request. I read no provision in APRA that would allow a public agency to refuse to respond to a request for a record with information about the estimated cost for the copies, anticipating that a person will be unable to pay a copying fee in advance. Because the Facility did not have a responsive record, it did not violate the APRA by failing to tell you the estimated cost of copying.

## CONCLUSION

For the foregoing reasons, I find that the Wabash Valley Correctional Facility did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Rich Larsen