

October 1, 2007

Lonnie Garner
Wabash Valley Correctional Facility
PO Box 2222
Carlisle, Indiana 47838

Re: Formal Complaint 07-FC-262; Alleged Violation of the Access to Public Records Act by the Indiana Department of Labor

Dear Mr. Garner:

This is in response to your formal complaint alleging the Indiana Department of Labor ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by failing to respond to your request for records. A copy of the Department's response to your complaint is enclosed. I find that the Indiana Department of Labor did not violate the APRA.

BACKGROUND

In your complaint you allege that you requested from the Department a copy of the Department's administrative "S.L.D.A." policy and procedures. You also asked questions of the Department related to an employee's ability to "challenge" his or her wages. You enclosed a copy of the Department's response dated August 8, 2007 indicating the Department had received your August 6 request and had no records responsive to your request.

The Department responded to your complaint on September 13. The Department indicated it received your request and responded to you appropriately that it maintains no records responsive to your request. Further, the Department is under no obligation to answer legal questions posed by a requester.

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." I.C. §5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. I.C. §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 the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

Here the Department received your request on August 7 and responded on August 8, well within the seven days allowed under the APRA. The Department indicated it does not maintain the records you request and as such has no records responsive to your request. Since a public agency cannot produce records that do not exist, the Department did not violate the APRA by not providing records. Regarding the questions you posed to the Department, the APRA does not require an agency to respond to questions.

CONCLUSION

For the foregoing reasons, I find that the Indiana Department of Labor did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Richard Bramer, Deputy Attorney General