

October 10, 2007

Marvin Taylor, Sr.
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-272; Alleged Violation of the Access to Public Records Act by Wishard Health Services

Dear Mr. Taylor:

This is in response to your formal complaint alleging Wishard Health Services ("Wishard") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to records. A copy of Wishard's response is enclosed for your reference. I find that Wishard did not violate the APRA.

BACKGROUND

You previously filed a formal complaint with this office regarding this particular request for records. The complaint resulted in Opinion of the Public Access Counselor 07-FC-125, wherein Counselor Davis found that Wishard had not received your request. Further, Counselor Davis instructed you to complete the appropriate medical information release form so you could obtain the records you requested. You now allege Wishard has since denied you access to the records when it sent you a letter dated August 14 indicating the records you requested could not be located.

Wishard responded to your complaint by letter dated September 26, wherein Wishard indicated that after some additional searching the records were located. Wishard did not provide any explanation regarding why the records could not originally be located but were now located. I understand the record has now been sent to you.

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." Ind. Code §5-14-3-

1. Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. I.C. §5-14-3-3(a). Wishard is a public agency under the APRA. I.C. §5-14-3-2(1)(2)(A); I.C. §16-22.

Patient medical records and charts created by a provider are confidential unless the patient gives written consent under Indiana Code §16-39. A request for inspection and copying must be, at the discretion of the agency, in writing on or in a form provided by the agency. IC 5-14-3-3(a)(2).

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 Wishard received your request and sent you a letter dated July 12 indicating it needed additional time to respond to your request. I do not find this to be a violation of the APRA, since the APRA does not provide a time at which the agency must produce the records. Wishard sent you an additional letter dated August 14, indicating it could not locate the records you requested and asking you to provide further information to assist in the search. It is my understanding you did not provide further information but instead filed this complaint.

After receiving your complaint, Wishard indicates it was able to locate the record you requested but did not indicate why the change. It may be the case Wishard was able to locate the record because of further information you provided in your complaint. I urge you in the future to provide further information to a public agency who requests it when it is attempting to respond to your request for records. I do not find any further evidence indicating Wishard violated the APRA, and I understand you now have the record you sought.

CONCLUSION

For the foregoing reasons, I find that Wishard did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Jessica Barth, VP for Legal Affairs and Chief Counsel