

October 15, 2007

Dexter Berry
DOC #114153
PO Box 1111
Carlisle, Indiana 47848

Re: Formal Complaint 07-FC-276; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Berry:

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

BACKGROUND

In your complaint you allege you submitted to the WVCF a request for personnel records of two individuals. You received a letter from the WVCF dated August 24 indicating the two employees whose records you requested are employees of an outside contractor and as such the WVCF does not maintain the records of those employees. You submitted your complaint on September 11, and I received it on September 13.

The WVCF responded to your complaint by letter dated September 17. The WVCF reiterated what it told you, that the two employees are not employees of the WVCF but are employees of an outside contractor. As such, the WVCF does not maintain personnel records of those individuals.

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. The WVCF 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 WVCF 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).

Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of the public agency: . . .

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

. . . This subdivision does not apply to the disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

IC 5-14-3-4(b).

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, the agency must respond to the request within seven days of receipt. I.C. §5-14-3-9(b).

Here, you requested personnel records subject to disclosure pursuant to I.C. §5-14-3-4(b)(8). Had the employees regarding whom you requested the records been public employees, the records would be required to be disclosed under I.C. §5-14-3-4(b)(8). Here, though, the employees regarding whom you requested the records are employees of a private entity which serves as a contractor for the Indiana Department of Correction. Because they are employees of the private entity and are not public employees, the APRA does not apply to their personnel records.

CONCLUSION

For the foregoing reasons, I find that the WVCF did not violate the APRA by denying you access to records it does not maintain because the employees whose records you requested are not public employees.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Rich Larsen, Wabash Valley Correctional Facility