

March 12, 2007

Leonard Bernard McQuay
#874304
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 07-FC-34; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. McQuay:

This is in response to your formal complaint alleging that the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act by denying you access to information on seventeen correctional officers. I find that the Facility must provide the information you requested that is required to be disclosed under the Access to Public Records Act.

BACKGROUND

You requested specific information on seventeen named correctional officers who work for the Department of Correction. Specifically, you requested the first and last name, the gross compensation, notice of any criminal past or arrest records on file, last place of employment, and how long each person has been working in the Department of Correction or the Facility.

The Facility's legal counsel Robert D. Bugher wrote a denial letter to you on January 18, 2007. He denied the records under IC 5-14-3-4(b)(10) for documents which contain administrative or technical information that would jeopardize a record keeping or security system. Because of the serious safety and confidentiality concerns associated with allowing offenders to have access to personal information related to Facility staff, the Facility will not provide this information.

In Mr. Bugher's complaint response, he reiterated the "security system" exemption as the basis for the denial. He stated that staff is advised not to reveal any personal information to offenders. If offenders learn any personal details about staff, that knowledge can be used to manipulate, harass, or even blackmail staff. Mr. Bugher quoted the Facility personnel policy, in part: "Allowing offenders the information set out at IC 5-14-3-4(b)(8) would have seriously destabilizing impact on the security systems put in place in our Indiana Department of Correction prison facilities." Mr. Bugher asked on behalf of the Facility that the Public Access Counselor uphold the Facility's position that employee personnel records are exempt from disclosure to offenders incarcerated in the correctional facilities. I have enclosed the Facility's complaint response with this Opinion.

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 public agency that receives a written request for a record may deny the request if the denial is in writing and contains a statement of the exemption or exemptions that authorize the agency to withhold the public record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). A public agency bears the burden to show that a record is exempt. IC 5-14-3-1; IC 5-14-3-9(g).

A public agency may withhold at its discretion "Administrative or technical information that would jeopardize a record keeping or security system." IC 5-14-3-4(b)(10). Hence, if the information you seek is administrative or technical information that would jeopardize a security system of the Department of Correction, the Facility would be able to withhold it.

However, some of the information you are requesting is required to be disclosed under the APRA. Mr. Bugher acknowledges as much when he references IC 5-14-3-4(b)(8).

Personnel files of public employees may be withheld 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. IC 5-14-3-4(b)(8)(Emphasis supplied.)

The above information contained in a personnel file is required to be disclosed. Further, nothing contained in subsection (b) shall limit or affect the right of any person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency. IC 5-14-3-4(c)(Emphasis supplied.).

The Department of Correction has asked that I uphold the position of the Department of Correction with respect to withholding the "personal information" relating to correctional

officers. Yet, you have asked for information specified in IC 5-14-3-4(b)(8), except in one respect. The Department of Correction may believe that the Public Access Counselor can determine that the Department has a meritorious reason to depart from the mandatory disclosure requirements in the Access to Public Records Act. However, only the legislature can overrule the application of the APRA as it applies to the Department of Correction, and only then through its legislative enactments. Neither I nor the Department of Correction may exercise discretion to apply the exemption at IC 5-14-3-4(b)(10) and in doing so, disregard the clear mandate in IC 5-14-3-4(c) that states that section 4(b) does not limit the required disclosure contained in IC 5-14-3-4(b)(8). In other words, section 4(b)(8) trumps IC 5-14-3-4(b)(10).

I make no finding with respect to whether the compensation, previous work experience, or dates of employment of correctional officers are administrative information that would jeopardize a security system, because it is not necessary to do so given the application of IC 5-14-3-4(c).

However, I note that part of your request is for “notice of any criminal past or arrest records on file.” If this information is contained in the personnel file, it is not required to be disclosed under IC 5-14-3-4(b)(8). The Facility may exempt that information under IC 5-14-3-4(b)(8).

CONCLUSION

For the foregoing reasons, I find that the Facility violated the Access to Public Records Act when it denied your request for the personnel file information required to be disclosed under IC 5-14-3-4(b)(8). This denial is actionable under IC 5-14-3-9(e).

Sincerely,

Karen Davis
Public Access Counselor

cc: Robert Bugher