

January 15, 2008

Aaron Isby
DOC #892219
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 08-FC-11; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Isby:

This is in response to your formal complaint alleging the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Facility's response to your complaint for your reference. It is my opinion that the Facility did not violate the APRA.

BACKGROUND

In your complaint you allege that you submitted to the Facility a request for access to records dated November 30, 2007. Specifically, you requested records related to your commitment to the Facility. Receiving no response, you mailed this complaint on December 10, and I received it on December 17.

The Facility responded to your complaint by letter dated December 18 from Public Information Office Rich Larsen. Mr. Larsen contends he did not receive your request. Mr. Larsen indicates that Indiana Department of Correction Policy 00-03-101 provides that such a request must be made to the Facility public information officer rather than legal services, which is where you sent the request. Further, Mr. Larsen contends you failed to use the form required by the Facility. Finally, Mr. Larsen indicates that another department of the Facility did send the records to you on December 10, for which Mr. Larsen will send you an invoice.

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

Facility 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 Facility 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).

A request for inspection or copying must be, at the discretion of the agency, in writing on or in a form provided by the agency. I.C. §5-14-3-3(a)(2).

Here, you did not send the request to the correct department within the Facility. Further, you did not utilize the form provided by the Facility for such requests. While the records you requested may be disclosable under the APRA, the Facility did not violate the APRA since your request was not made using the prescribed form.

Regardless of this error, another department of the Facility sent the requested records to you. I understand you have claimed to be entitled to at least one copy of a public record at no charge. There is no provision in the APRA entitling you to copies of public records at no charge. It is possible in some instances the General Assembly may have provided for fee waivers for copies of certain public records. Further, there are instances when a court will issue an order of indigence ordering an incarcerated person to receive copies of certain public records at no charge. In the case of your request to the Facility, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge. As such, the Facility has not violated the APRA by indicating it will charge you for the copies you received.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Rich Larsen, Wabash Valley Correctional Facility