



# STATE OF INDIANA

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February 2, 2011

Mr. Ulises Ledo  
DOC # 943184  
Westville Correctional Facility  
5501 S. 1100 W.  
Westville, IN 46931

*Re: Formal Complaint 11-FC-04; Alleged Violation of the Access to Public Records Act by the Westville Correctional Facility*

Dear Mr. Ledo:

This advisory opinion is in response to your formal complaint alleging that the Westville Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

## BACKGROUND

In your complaint, you allege that on December 6, 2010, you submitted a records request to the Facility seeking "a copy of the receipt of the commissary order of March 5, 1999 in which I purchased an [sic] color RCA Clearview Television for \$229.00 while I was being housed at Wabash Valley Correctional Facility." You also requested "transactions of account verifying [that] purchase." On December 8th, you received a response from the Facility's Records Department informing you that "no such receipts exist, in essence."

My office forwarded a copy of your complaint to the Department of Correction, but we have not yet received a response. Upon review of the Facility's response to your request, which you enclosed with your complaint, it appears that the Facility did claim to not have responsive records. The Facility also referred you to Wabash Valley Correctional Facility because the transaction occurred at that facility rather than at Westville Correctional Facility.

## ANALYSIS

The public policy of the APRA states, “[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 a public agency subject to the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the Facility’s public records 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).

With regard to the Facility’s statement that it does not maintain the records you requested, previous public access counselors have repeatedly opined that if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). The APRA does not obligate an agency to create new records in response to a request.

I would recommend that you submit a request to Wabash Valley Correctional Facility to inquire as to whether it maintains the records you requested. I also note that if the record you seek was created in 1999, it might not be retained for nearly 12 years under the applicable retention schedule. The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. See I.C. § 5-14-3-4(e). It is not a violation of the APRA if the record you requested does not exist because it was disposed of in accordance with an applicable retention schedule. That said, if Wabash Valley Correctional Facility does maintain the record, it should be available for you to inspect and copy unless a provision of the APRA requires or allows its nondisclosure.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Facility did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Robert Bugher