



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 16, 2011

B.A. Corley
6908 South Old Highway # 41
Carlisle, Indiana 47838

Re: Formal Complaint 11-FC-288; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Corley:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Robert Bugher, Chief Counsel, responded on behalf of the DOC. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege you have submitted numerous requests pursuant to the APRA for the following records of the Wabash Valley Correctional Facility (WVCF):

- (a) Reason/Notice for your placement on SHU, including which official approved the placement.
- (b) Why you have been proper periodical 30/9A and annual reviews for release
- (c) Copy of the July 2011 annual review and class designation decision
- (d) Offender location history and bed moves paid for in October 2011
- (e) Medical record test results
- (f) Corizon Memo re: procedure for issuance of medical request forms from U.C.M. to offenders

It would appear from your complaint you also allege that you have submitted payment to the WVCF and/or the DOC for the records cited under (d)-(f).

In response to your formal complaint, Mr. Bugher advised that the WVCF never received your request for records. Since the records you are requesting are held at the WVCF, you should make your request to the appropriate personnel at the facility.

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.” *See* I.C. § 5-14-3-1. The DOC is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the DOC’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The DOC maintains that the WVCF did not receive a request from you. If the WVCF did not receive your request, it was not obligated to respond to it. As previous Public Access Counselor’s have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether the WVCF or the DOC received your request. Under the APRA, if a 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. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the WVCF or the DOC received your request and did not respond to it within the timeframes provided by section 9, it acted contrary to the APRA.

I trust that the WVCF will respond to your request in accordance with the APRA upon its receipt. Mr. Bugher indicated that the records you seek are available via the WVCF and you should direct your request to the appropriate personnel at the facility.

CONCLUSION

For the foregoing reasons, it is my opinion that the DOC or the WVCF did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage
Public Access Counselor

cc: Robert Bugher