



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

JEROME M. OWENS,

Complainant

v.

WABASH VALLEY CORRECTIONAL FACILITY

Respondent

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17-FC-53

ADVISORY OPINION

April 7, 2017

This advisory opinion is in response to the formal complaint alleging Wabash Valley Correctional Facility (“Facility”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-1.5-1 et. seq. The Facility has not responded, despite an invitation to do so on March 7, 2017. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 28, 2017.

BACKGROUND

The formal complaint filed on February 28, 2017 alleges the Wabash Valley Correctional Facility violated the APRA for failing to provide requested records.

On about February 14, 2017, the Facility denied the Complainant’s records request. The documents sought included a video of a secured confinement unit for an incident in which the Complainant was involved, copies of the incident report and a list of all involved Department of Correction employees.

The denial was based on security concerns with providing video of a secured area, as well as a lack of specificity for a list of personnel. Additionally, there were no funds in the Complainant’s inmate account to purchase the records. The Complainant claims his indigence status is justification for obtaining copies free of charge.



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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 Indiana Code § 5-14-3-1*. The Wabash Valley Correctional Facility is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the Facility’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 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 (7) days of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The formal complaint is clear the public records sought will subsequently be used in litigation against the facility. The Access to Public Records Act and the adversarial process administered by this Office are not pre-litigation discovery devices. Accordingly, there are no waivers of fees for indigence in the APRA. Trial rules do provide for a waiver. Additionally, a court may override the discretion of an agency to withhold certain records they may do pursuant to a public records request.

If the Complainant is serious about filing a lawsuit against the Facility, he may do so and obtain the records in that manner under the purview of the judiciary. The Facility has properly asserted confidential and discretionary reasons for withholding the documents. It is my sincere hope, however, the Facility (or alternatively the Department of Correction) respond to the formal complaints fielded by this Office in order to provide an official statement to the allegations.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Wabash Valley Correctional Facility has not violated the Access to Public Records Act.

Luke H. Britt



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A handwritten signature in black ink, appearing to read "L. Britt", is positioned above the title of the Public Access Counselor.

Public Access Counselor