

June 28, 2001

Mr. Charles R. Ford
#856492 E-313
Wabash Valley Correctional Facility
Post Office Box 1111
Carlisle, IN 47838-1111

*Re: Advisory Opinion 01-FC-36; Alleged Denial of Access to Public Records by the
Indiana Department of Correction.*

Dear Mr. Ford:

This is in response to your formal complaint, which was received on June 18, 2001. You have alleged that the Indiana Department of Correction ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you requested access to several items from the Department and did not receive a response to your request. Ms. Pam Pattison of the Department responded in writing to your complaint and a copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Department's failure to respond to your written request within seven (7) days after it was received was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, on May 24, 2001, you sent a written request to Ms. Pattison for access to and, if necessary, a copy of several documents. You sent this request by certified mail and received a return receipt indicating that on May 31, 2001, someone from the Department had accepted the request on behalf of Ms. Pattison. You also provided a copy of your request to the public information officer for the Wabash Valley Correctional Facility. You filed your formal complaint because more than seven (7) days had passed and you had not received a response from the Department.

In response to your complaint, Ms. Pattison admitted that the Department received your written request on May 31, 2001. In the letter dated June 19, 2001, Ms. Pattison advised you that your request was not stated with reasonable particularity under the APRA and that the Department would be unable to comply with your request until you provided more specificity about the items requested.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public officials and employees,

whose duty it is to provide the information." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you mailed your request to the Department and did not receive a response to your request within seven (7) days after the Department received it. It is my opinion that under the APRA, this failure to respond to your request constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). Under the APRA, requests must be stated with reasonable particularity, so if the Department needs more information to comply with your request, it is appropriate for the Department to ask for it. This does not, however, change my opinion that the Department should have provided this response within the seven (7) day period contemplated under the APRA.

CONCLUSION

It is my opinion that the Department of Correction's failure to respond to your written request for access to public records within seven (7) days after it was received was a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Pam Pattison, DOC

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