

April 30, 2003

Michael Hunt
#961894 N-316
Wabash Valley Correctional Facility
Carlisle, IN 47838

Re: *Advisory Opinion 03-FC-21*; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction.

Dear Mr. Hunt:

This is in response to your formal complaint, which was received on April 3, 2003. You have alleged that the Indiana Department of Correction, Wabash Valley Correctional Facility ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department wrongfully denied you access to public records with respect to a written request that you made dated March 11, 2003. Ms. Pam Pattison of the Department responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not deny you access to public records with respect to your March 11th public records request.

BACKGROUND

According to your complaint, in a letter dated March 11, 2003, you requested access to public records from the Department. You did not include a copy of your March 11th request. You did, however, receive a substantive response to this request dated March 20th from Mr. Rich Larsen, Administrative Assistant. Mr. Larsen responded to your request as follows:

1. There are no records including the first and last names and badge numbers of five (5) officers allegedly in the M Housing Unit on February 3, 2003 at or around 1:00 a.m. and he was not compelled to create such a record for you. Apparently you followed up your March 11th request correcting the number of officers to six (6), but Mr. Larsen indicated that there is no mention of this in the control pod logbook.
2. Apparently you requested a Transfer Authority form, and Mr. Larsen advised you that you were

not authorized, under Department policy, to have such a form in your control.

3. Mr. Larsen granted you access to a copy of the logbook indicating staff in the MHU on the wing where you were once housed once he received the ten cent (\$0.10) copying fee from you.
4. He indicated that he checked your offender packet and learned that you have already received the first and last name of Sergeant Kingery so the Department would not supply that again to you.
5. The Department does not have a VCR tape for you to view. ¹

In a letter to Mr. Larsen dated March 21, 2003, you advised him that it was your opinion that he had violated the APRA with respect to your March 11th request. You then filed your formal complaint with this Office.

In her response, Ms. Pattison stated that you were provided with access to public records available based upon what you had requested. The Department is not required under the APRA to create records for you. Ms. Pattison also verbally advised me that copies of the Transfer Authority forms are not provided to offenders as a safety and security measure authorized under Indiana Code chapter 11-11-2.

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." 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). A public agency is generally not required to create new records in order to respond to a public records request. See generally, Ind. Code chapter 5-14-3. A person who has been denied access to public records under the APRA may file an action in circuit or superior court to compel the public agency to allow inspection and copying of the public records. Ind. Code §5-14-3-9(d).

According to your complaint, you sent a request to Mr. Larsen for copies of various public records related to an occurrence on February 3, 2003. Mr. Larsen advised you that the Department does not have a public record listing the names, first and last, of officers allegedly in the M-Unit on that date at or around 1 a.m. and that there is no videotape for you to view related to this matter. It is my opinion that the Department is not required to produce public records that do not exist and therefore, the

Department's failure to provide these to you was not a violation of the APRA.

With respect to the logbook, Mr. Larsen advised you that you could have a copy of the specific entry you requested. Mr. Larsen merely informed you that you must provide the ten cent (\$0.10) copying fee before you will receive your copy of that public record. Under the APRA, the Department may charge a photocopying fee under Indiana Code section 5-14-3-8(c) and collect that fee in advance under Indiana Code section 5-14-3-8(e). For these reasons, it is my opinion that the Department did not deny you access to the logbook entry by merely requesting that you pay the copying fee in advance.

You also requested a copy of a Transfer Authority form and Mr. Larsen responded that you are not authorized to have such a form in your possession, so he would not produce it to you. The Department has statutory authority under Indiana Code chapter 11-11-2 to place limitations on the types of property that an offender can possess. According to Ms. Pattison, offenders are not permitted access to various forms under rules and policies adopted under the authority of Indiana Code chapter 11-11-2 so you were not provided with a copy. The APRA is a statute of general application and in some cases the General Assembly has passed more specific statutes that supersede or override the provisions of the APRA. In this case, the Department has statutory authority to limit what you as an offender may possess. As such, it is my opinion that the Department did not violate the APRA by denying you access to a copy of a Transfer Authority form, because Indiana Code chapter 11-11-2 allows the Department to withhold this public record from you.

Finally, Mr. Larsen did not provide you with the first and last name of Sergeant Kingery because according to your offender packet, you have already received this information on a prior occasion. Under the APRA, a public agency is required to provide at least (1) copy of a disclosable public record upon request. Ind. Code §5-14-3-8(e). The public agency, however, is not required to supply the same public record more than one (1) time. It is my opinion, therefore, that if the information you requested about Sergeant Kingery had already been provided to you, then the Department did not violate the APRA by refusing to provide you with the same public record a second time.

CONCLUSION

It is my opinion that the Department of Correction, Wabash Valley Correctional Facility, did not deny you access to public records in violation of the APRA with respect to your March 11, 2003 public records request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Pam Pattison, IDOC w/o enclosure

¹ You apparently also requested that Mr. Larsen interview persons for you. Since this is not a public records issue, it will not be listed here nor addressed in this Opinion.