

May 1, 2003

Michael Hunt
#961894 L-107
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: *Advisory Opinion 03-FC-25*; Alleged Denial of Access to Public Records by the Indiana Department of Correction, Wabash Valley Correctional Facility.

Dear Mr. Hunt:

This is in response to your formal complaint, which was received on April 11, 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 28, 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 28th request because this request was never received.

BACKGROUND

According to your complaint ¹, in a letter dated March 28, 2003, you requested access to public records from the Department, to the attention of Mr. Rich Larsen. In that request, you asked for copies of

1. State Form 49076 dated January 28, 2003 completed by Mr. Lincoln at the Receiving Department on March 10, 2003.
2. All transaction account history reports as of January 27, 2003 through April 1, 2003.
3. Conduct detail for case number WVD 03-02-0105 and location history beds as of January 27, 2003 through April 1, 2003.
4. Conduct detail for Case Number ISP 02-11-0199.

You claim that you submitted copying fees for the above-referenced records, but never received your copies. You stated that you never received a response from the Department as to this request and therefore, you filed your formal complaint with this Office.

In her response, Ms. Pattison stated that Mr. Larsen's records show you made an earlier request to him in March, but that he responded to it. Apparently, Mr. Larsen never received your March 28th request. Ms. Pattison also indicated that your allegation that funds were removed from your trust account for copies of these documents is not supported by any documentation at the facility. For these reasons, it is the Department's position that you were not denied access to any public records.

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 on March 28, 2003. Mr. Larsen never received this request. A public agency must first receive a request in order to be responsible for a response under Indiana Code section 5-14-3-9. For this reason, it is my opinion that the Department did not violate the APRA with respect to your March 28th request because that request was never received.

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 28, 2003 public records request because the Department did not receive your request.

Sincerely,

Anne Mullin O'Connor

Enclosure

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

¹ Your complaint refers only to the March 28, 2003 request, with a reference to exhibits attached. The problem is that these exhibits appear to be copies of items you believe are significant to your complaint, but because you have written additional comments on the face of these documents, they are difficult to understand. In the future, you should submit only unaltered copies and place any explanation in separate pages. Otherwise, your exhibits are not useful in the complaint process.