

August 6, 2003

Mr. Aaron Israel, 892219  
A-209- SHU  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, IN 47838

Re: *Advisory Opinion 03-FC-55*: Alleged Denial of Access to Public Records by the Indiana Department of Correction, Wabash Valley Correctional Facility

Dear Mr. Israel:

This is in response to your formal complaint, which was received on July 9, 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 June 5, 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 June 5th request because this request was never received by the Department.

### BACKGROUND

According to your complaint, in a letter dated June 5, 2003, you requested access to public records from the Department, to the attention of Mr. Craig Hanks, Superintendent of the Wabash Valley Correctional Facility. In that request, you asked for copies of

1. All annual reports created by the Wabash Valley Correctional Facility Audit from April 1998 to the present;
2. All or any documents in written form that contain information of the number of cell extractions and assaults committed by S.H.U. guards against prisoners confined to the SHU from April 1998 to the present date;
3. All or any documents in written form that list the first and last name of each prisoner who

was extracted or assaulted while on the S.H.U. by guards and the extent of the injuries these prisoners suffered from April 1998 to the present date; and

4. All documents in written form that list the full name of each injured guard who participated in a cell extraction or assault against a prisoner while working on the S.H.U. from April 1998 to the present date.

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. Craig never received your June 5th request. For this 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 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. Craig for copies of various public records on June 5, 2003. Mr. Craig 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 June 5<sup>th</sup> 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 June 5, 2003 public records request because the Department did not receive your request.

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor

Enclosure

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