

May 14, 2008

Byron Holman
DOC #881150
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 08-FC-110; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Morris:

This advisory opinion is in response to your formal complaint alleging the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Facility's response to your complaint for your reference. It is my opinion the Facility did not violate the APRA.

BACKGROUND

In your complaint you allege that you requested records from the Facility on or about April 8, 2008. The Facility denied you access to the records, indicating the Facility does not maintain the information. You filed this complaint on April 30.

The Facility responded to the complaint by letter dated May 1 from Rich Larsen of the Facility. Mr. Larsen contends the Facility responded to you by letter dated April 8, and he included a copy of the letter. Mr. Larsen indicates the Facility does not maintain the records you seek and is not required to create the records in response to your request.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Facility is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Facility during regular

business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail, facsimile, or electronic mail and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Facility received your request on or about April 8 and responded on April 8, well within the time allowed by the APRA. The Facility indicated it does not maintain the records you seek. While you may believe the Facility maintains the information you seek, the Facility does not maintain the records you seek. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. As such, it is my opinion that the Facility has not violated the APRA by denying access to records it does not maintain.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Rich Larsen, Wabash Valley Correctional Facility