

August 27, 2007

Garry Seay
DOC #853142
Indiana State Prison; PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-222; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Seay:

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

BACKGROUND

In your complaint you allege you submitted a request to the WVCF for the names of all staff, guards and other employees currently on the payroll at the WVCF. You indicate you submitted the request the last week of August 2007, but since it is just now the last week of August, I am assuming you submitted your request earlier in the year. You allege the WVCF denied your request by letter dated July 3. You filed your complaint on July 27.

The WVCF responded to your request by letter from Rich Larsen, Public Information Office for WVCF. Mr. Larsen indicates in his response that the records you requested were withheld from disclosure pursuant to I.C. §5-14-3-4(b)(10), regarding an exemption for disclosure for documents which contain administrative or technical information that would jeopardize a record keeping or security system. Mr. Larsen indicates that because of the serious safety and confidentiality concerns associated with allowing offenders to have access to personal information related to the staff, WVCF will not provide such information.

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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency 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).

The WVCF 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 WVCF 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 or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If a request is made in writing, the public agency may deny the request if the denial is made in writing and the denial includes a statement of the specific exemption(s) authorizing the withholding of all or part of the public record and the name and title of the person responsible for the denial. I.C. §5-14-3-9(c).

Personnel files of public employees may be withheld except for the following, which must be disclosed:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. *This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.*

I.C. §5-14-3-4(b)(8)(Emphasis added.)

To the extent the records you seek, containing names of all staff, guards, and other employees on the payroll at the WVCF, are maintained in employee personnel files, the WVCF may require you to particularize your request by employee name. The APRA does not require an agency to disclose personnel information generally for groups of employees. I.C. §5-14-3-4(b)(8).

The WVCF claims the names of employees are exempt from disclosure under I.C. §5-14-3-4(b)(10), which exempts documents which contain administrative or technical information that would jeopardize a record keeping or security system. The Indiana Court of Appeals addressed this exception in *City of Elkhart v. Agenda*, 683 N.E.2d 622 (Ind. Ct. App. 1997). There the requested information was in the form of telephone numbers. The court did not agree that telephone numbers were technical or administrative information, defining "technical" as "of or relating to technique" and "marked by or characteristic of specialization" and defining "administrative" as "of or relating to administration." *Id.* at 626-627. Similarly, the information requested here, names of employees, is not technical or administrative. Further, certain

personnel information is specifically required to be disclosed under I.C. §5-14-3-4(b)(8), when the request is particularized by employee name.

CONCLUSION

For the foregoing reasons, I find that the Wabash Valley Correctional Facility did not violate the Access to Public Records Act when it refused to disclose personnel information for a group of employees.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Rich Larsen, Wabash Valley Correctional Facility