



STATE OF INDIANA

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December 22, 2010

Mr. Aaron Isby
DOC # 892219
Wabash Valley Correctional Facility
6908 S. Old U.S. Hwy. 41
Carlisle, IN 47838

Re: Formal Complaint 10-FC-291; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Isby:

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 § 5-14-3-1 *et seq.* The Facility's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on November 8, 2010, you submitted a written public records request to Richard Larsen of the Facility. You requested "public records and/or information regarding my icare [sic] orders from Aramark Correctional Services delivered and received by PEN Products employees." You claim that the Facility failed to respond to your request.

In response, Mr. Larsen states that he has not received such a request from you. Moreover, you failed to use the appropriate records request form even though you were aware that the Facility required it. Mr. Larsen attached a previous request from you that you submitted on the appropriate form. With regard to the substance of your request, Mr. Larsen states that it is exempt from disclosure under 210 Ind. Admin. Code 1-6-2(A), (C), and (G).

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

The Facility asserts it did not receive your request. If the Facility did receive your request, the agency had a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Facility did not receive your request, it did not violate the APRA by not responding. *See Opinion of the Public Access Counselor 09-FC-44.*

As to the substance of your request, the Facility cites to 210 I.A.C. 1-6-2(3)(A), (C), (G) for denying you access to the requested records. The APRA states that a public agency may not disclose records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” I.C. § 5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), the Indiana Department of Correction (“DOC”) may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC has classified several categories of documents as “confidential information,” including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and any other information required by law to be kept confidential. 210 I.A.C. 1-6-2(3)(A), (C), (G). Thus, the Facility did not violate the APRA by denying your request. *See also Opinion of the Public Access Counselor 05-FC-40.*

Moreover, it is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure for information that could affect the security of a jail or correctional facility:

- Records requested by an offender that:
 - (A) contain personal information relating to:
 - (i) a correctional officer (as defined in IC 5-10-10-1.5);
 - (ii) the victim of a crime; or
 - (iii) a family member of a correctional officer or the victim of a crime; or
 - (B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23). Thus, the Facility acts within its discretion to withhold records that could affect the concern of a correctional facility. In my opinion, the Facility has sustained its burden here. *See* I.C. § 5-14-3-1.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Rich Larsen