



STATE OF INDIANA

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September 9, 2015

Jeffrey Blackmon #935563
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, IN 47838

Re: Formal Complaint 15-FC-214; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction, Wabash Correctional Facility

Dear Mr. Blackmon,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction, Wabash Correctional Facility (“Wabash”) violated the Access to Public Records Act (“APRA”) Ind. Code § 5-14-3-1 *et. seq.* Wabash has responded via Lee Hoefling, Executive Assistant. The response is enclosed for your review. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 15, 2015.

BACKGROUND

On May 13, 2015 you submitted a request for numerous records pertaining to Kauffman Engineering – a Department of Correction contractor. You also requested records related to personnel records at Wabash. Your request was denied on May 15, for failure to submit your request on the proper form.

You believe that you used the proper form and filed a grievance against Wabash on June 4. Your grievance was denied for failure to use the proper form.

On July 2, you resubmitted your request. On July 6, you were informed that your request was sent to the improper person, Superintendent Richard Brown, instead of the Public Information Officer. You were invited to resubmit your request. You were asked; however, to refine your request because “your inquiry [was] not so much a request for access to public records as it [was] a request that the facility undertake a research project on your behalf.”

On August 11 Wabash responded. Wabash contends that Kauffman Engineering is not a public agency that has entered into a joint venture with the facility. Wabash notes that while it may be subject to the APRA, it does not have control over the records sought. Further, Wabash contends that internal affairs investigation records are not subject to disclosure.

DISCUSSION

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.” See Ind. Code § 5-14-3-1. The Wabash Correction Facility is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Wabash’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

I note first that a public agency, such as Wabash, is allowed to mandate that individuals use specific forms to request records pursuant to Ind. Code § 5-14-3-3(a)(2). Second, you also sent your request to Kauffman Engineering. Kauffman is a private entity and therefore not obligation to public access law provisions. You were informed of this fact prior to filing this complaint.

Your request falls into two categories: 1) records related to Kauffman; and 2) personnel records/internal affairs records.

Wabash has stated that it does not control the records sought relating to Kauffman. The APRA does not require a public agency to provide records it does not possess. Wabash has stated that it does not control the records related to Kauffman. However, control over records is different from possession of records.

The Public Access Counselor is not a finder of fact. Therefore, this office can only opine based on the facts presented. Because there is a question of fact as to whether Wabash does, in fact, possess the records requested, I will opine on both possibilities.

If Wabash does have the records, then it is required under the APRA to make reasonable efforts to provide them. In this case, reasonable efforts would entail contacting Kauffman regarding permission to release the records. If Wabash does not have the records, then it has met its obligation under the APRA.

With regard to your second category of requests, related to personnel records, Wabash has relied on Ind. Code § 5-14-3-4(a)(2), which states that 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.” In support, Wabash notes that an Administrative Procedure regarding internal affairs holds internal affairs investigations are confidential.

However, Wabash has failed to provide the Administrative Procedure cited, which leaves a question of fact as to the exact wording of the document.

Finally, Wabash cites the investigative exemption under Ind. Code § 5-14-3-4(b)(1). Wabash relies on the fact that Internal Affairs Office staff is considered law enforcement. Therefore, under the APRA, the Office has discretion to withhold records under the APRA.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Wabash Valley Correctional Facility did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Lee Hoefling