

March 28, 2005

Alvaro McElroy
D.O.C. # 985536
Wabash Valley Correctional Facility
P.O. Box 500
Carlisle, IN 47838

Re: Formal Complaint 05-FC-40; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. McElroy:

This is in response to your formal complaint alleging that the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act by failing to give you information regarding an internal investigation. I find that the Wabash Valley Correctional Facility failed to give you the correct reason for denying you the record, but I also find that you are not entitled to the record regarding an internal investigation.

BACKGROUND

You requested the record concerning an internal investigation at the Facility involving you. You do not specify the date of your request. The Facility denied the record by memo to you dated February 10, 2005, citing Ind.Code 5-14-3-4(b)(1) as its reason for denial. You filed a formal complaint with my office on February 23, 2005.

I sent a copy of your complaint to the Facility. For your reference, I am enclosing the written response of Administrative Assistant Rich Larsen. He acknowledged that in his initial response to you, Mr. Larsen had cited the internal investigative file as an investigatory record of a law enforcement agency, since "facility investigations are often forwarded to Indiana State Police for review." Mr. Larsen stated that a more appropriate reason in denying the request is 210 IAC 1-6-2(3)(E), which is a Department of Correction administrative rule that classifies as confidential records regarding internal investigation information.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act. IC 5-14-3-3(a). If a request for a record is made in writing, the public agency may deny the request if the denial is in writing and the denial includes: 1) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and 2) the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

The Facility is a public agency under the Access to Public Records Act. IC 5-14-3-2. The record that it maintains regarding the internal investigation is a public record, but not all public records may be disclosed by the Facility. There are several exceptions to disclosure under the Access to Public Records Act. The investigatory records of law enforcement agencies may not be disclosed at the public agency's discretion. IC 5-14-3-4(b)(1). This is the reason that was cited to you in the denial memo of February 10.

An agency must not disclose a record 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. IC 5-14-3-4(a)(2). Under IC 11-8-5-2(a), the Department of Correction may classify as confidential information maintained on a person who has been committed to the department, including information relating to a pending investigation of alleged criminal activity or other misconduct, information which, if disclosed, might result in physical harm to that person or other persons, and information required by law or promulgated rule to be maintained as confidential. The Department of Correction has classified as confidential "internal investigation information." Ind. Admin. Code tit. 210, Rule 1-6-2 (2003).

The Facility appears to concede that the investigatory records of law enforcement exception is not the correct reason to deny you the record, where the Facility states only that "facility investigations are often forwarded to Indiana State Police for review." Because the Department of Correction is not a law enforcement agency as that term is defined in the Access to Public Records Act, IC 5-14-3-2, I cannot endorse the view that the Facility's internal investigation record, even if forwarded to the State Police, is an "investigatory record of a law enforcement agency."

The Facility cites, instead, the administrative rule that classifies internal investigations as confidential under 210 IAC 1-6-2(3)(E). Because the Access to Public Records Act states that records declared confidential by rule adopted by a public agency under specific statutory authority may not be disclosed by the public agency, the Facility did not violate the Access to Public Records Act in denying you the record. However, the Facility did violate IC 5-14-3-9(c) because the Facility failed to cite the specific exemption authorizing the withholding of the public record.

CONCLUSION

For the foregoing reasons, I find that the Wabash Valley Correctional Facility violated the Access to Public Records Act by failing to deny the record by stating the specific exemption authorizing withholding of the record relating to an internal investigation, but was required by its administrative rule to not disclose the internal investigation information to you.

Sincerely,

Karen Davis
Public Access Counselor

cc: Rich Larsen