

May 12, 2005

Chester Wilms
D.O.C. #943-594-E315
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838-2222

Re: Formal Complaint 05-FC-67; Alleged Violation of the Access to Public Records Act by the Fort Wayne Police Department

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the Fort Wayne Police Department ("Department") violated the Access to Public Records Act ("APRA") by failing to give you information regarding your pager. I find that the Fort Wayne Police Department did not violate the Access to Public Records Act, because it responded to your request within the timeframes required under the APRA.

BACKGROUND

You state that you are seeking information regarding when, where, how, and who destroyed your pager, which had been confiscated in connection with criminal charges brought against you. I sent a copy of your complaint to the Department. Captain Thomas Rhoades responded in writing, a copy of which I have attached for your reference. His response is actually in the form of a letter to you giving you the information regarding the fate of your pager.

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 APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request for records via U.S. Mail must respond to the request within seven (7) days of receipt of the request, or the request is deemed denied. IC 5-14-3-9(b). An agency is not required to create a record merely to respond to a person's request for

information, if the record does not already exist and the agency is not required by law to create the record.

Your allegation that the Department violated the Access to Public Records Act is without merit. The Department met the timeframes for responding to your request, and in fact, created a record containing the information that you requested when it was not required to.

CONCLUSION

For the foregoing reasons, I find that the Fort Wayne Police Department did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Captain Thomas Rhoades