

July 23, 2007

Tyrone Frazier
#910476
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-174; Alleged Violation of the Access to Public Records Act by Wishard Health Services

Dear Mr. Frazier:

This is in response to your formal complaint alleging Wishard Health Services (“Wishard”) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3) by failing to respond to your two requests for records. I find that Wishard did not violate the APRA.

BACKGROUND

Your complaint, received by the Public Access Counselor’s Office on June 21, 2007 (and duplicate copy received July 11, 2007), alleges Wishard violated the APRA by not responding to your requests on June 6 and June 27 for records related to toxicology studies and explanation of the ethanol level.

In response to your complaint, Wishard indicates it has no record of receiving your request. Further, Wishard indicates it has no records responsive to the request. Wishard cites Ind. Code 5-14-3-4(a)(9), which provides patient medial records and charts may not be disclosed unless the patient or legally authorized representative has given written consent. To the extent you are seeking another individual’s health information, Wishard indicates it is unable to disclose such without proper authorization. Furthermore, Wishard indicates that to the extent you are requesting an explanation of the ethanol level, this request is does not fall under the APRA.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2.

Wishard is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(l)(2). Accordingly, any person has the right to inspect and copy the public records of Wishard during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

A request for inspection and copying must identify with reasonable particularity the record being requested. IC 5-14-3-3(a). Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

Wishard does not have a record of having received your request. As such, it did not respond to your request. Even though it did not receive your request, Wishard provided a response to your request along with its response to your complaint. If Wishard did not receive your request, it cannot be under any duty to respond. Wishard did not violate the APRA by not responding to a request it did not receive.

CONCLUSION

For the foregoing reasons, I find that Wishard Health Services did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Jessica Barth, Wishard Health Services