

December 22, 2004

Mr. Sirlando Logan  
Wabash Valley Correctional Institution  
P.O. Box 500  
Carlisle, IN 47838

*Re: Formal Complaint 04-FC-219; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Institution*

Dear Mr. Logan:

This is in response to your formal complaint alleging that the Wabash Valley Correctional Institution (“Wabash Valley”) violated the Access to Public Records Act (“APRA”) by denying you access to records. I find that the Wabash Valley Correctional Institution denied you a record in violation of the Access to Public Records Act.

#### BACKGROUND

On November 12, 2004, you submitted an “Offender Grievance Program” form 45471. In that form, you requested information regarding the number of employees then currently employed at Wabash Valley, as well as the number of those employees who are non-white. You cited to IC 5-14-3-1, the Access to Public Records Act. The form bears the following notation under *Response*: “This has been answered on a request slip. This information cannot be given to you.” You then filed this complaint, which we received on November 24, 2004. In your complaint, you allege that the public information officer at Wabash Valley refuses to grant you access to the records.

I sent a copy of your complaint to Wabash Valley. I enclose the written response to your complaint, submitted by facility public information officer Rich Larsen. In his response, Mr. Larsen states that the superintendent’s office records do not indicate having received correspondence from you concerning the matter, alleging that you had not submitted a record request. He further states that had you submitted a request for public records, per the facility’s policy, the request would have been sent to him as facility public information officer. Mr. Larsen has also provided the information that you requested regarding the total number of

employees and a breakdown of them by race. Finally, Mr. Larsen states that he checked the offender grievance system and found your grievance. As public information officer, he oversees the facility grievance program. He states that he did not find the response satisfactory, and will pursue the matter.

#### ANALYSIS

Any person may inspect and copy the public records of a public agency, unless the records are excepted from disclosure under IC 5-14-3-4. IC 5-14-3-3(a). Mr. Larsen states that neither he nor the superintendent received correspondence relating to your records request. However, as I read your grievance, you specifically asked for records via your step 1 complaint. An agency may require that a records request be made either in writing or on a form supplied by the agency. IC 5-14-3-3(a)(2). However, nothing in Mr. Larsen's response indicates that anyone informed you that you were required to submit your request on a certain form, or even that such a policy exists. Your request for records, although contained on a grievance form, was clearly stated as a request for records under APRA. In addition, Mr. Larsen has indicated that he oversees the facility grievance program and serves as the liaison for record requests. Moreover, the agency responded by denying you the record, and the date of the response appears to be November 17, 2004, within the seven (7) days in which an agency is required to provide such a response when the record request is mailed. IC 5-14-3-9(b).

Therefore, in my opinion, you did submit a request for records, and were timely denied the record. However, the denial was in violation of APRA. Although the denial was in writing as is required for a written record request, it did not contain the specific exemption or exemptions authorizing the agency to withhold the record. IC 5-14-3-9(c). In fact, no such exemption would appear to exist for a record containing this information, if the agency maintained such a record. An agency is not required to create a record in order to satisfy a request for information if the agency is not otherwise required to maintain such a record under a provision of law. If information about the race of employees of Wabash Valley was not contained in any record maintained by the facility, the agency could have issued a response to the effect that "no records exist that are responsive to your request." In any case, Mr. Larsen has now provided the information you seek.

#### CONCLUSION

For the foregoing reasons, I find that the Wabash Valley Correctional Institution violated the Access to Public Records Act when it denied you a record without citing a legally sufficient reason for the denial.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Rich Larsen