

April 12, 2004

Mr. Michael Hunt  
No. 961894  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: 04-FC-40; Alleged Violation of the Access to Public Records Act by the  
Indiana Department of Correction*

Dear Mr. Hunt:

This is in response to your formal complaint alleging that the Indiana Department of Correction (Department) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it failed to timely respond to your request for records. A copy of the Department's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Department did not violate the APRA as alleged in your complaint.

#### BACKGROUND

According to your complaint, on January 29, 2004, you submitted a written request for records to the Department. The request is addressed to public information officers for both the Department (located in Indianapolis) and the Wabash Valley Correctional Facility where you are incarcerated (located in Carlisle). The request bears the street address for the prison. Your request seeks computer records and particularly classification and other records regarding another offender incarcerated at the Carlisle facility.

On March 5, 2004, having received no response to your request, you prepared and submitted this complaint challenging the Department's failure to respond to your request. You assert that the failure to timely respond violates the APRA. In response, the Department denies that it received a copy of your request for records, and neither the facility nor the Indianapolis office have any record of your request. Having now received your request with a copy of the complaint provided by this office, the Department further asserts in response to your complaint that you are not entitled to inspect or copy the requested records concerning the classification of

another offender for reasons of safety and institutional security. The Department does not cite to the specific statutory exemption allowing it to exempt the records from disclosure.

### ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of *receipt* of the request. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b). Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. *Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).

I decline to find that the Department violated the APRA under the facts as alleged in your complaint. The Department expressly states that it does not have any record of receiving your request at either the administrative offices of the Department or at your facility. While you provide a copy of a record request dated January 29, 2004, there is no evidence establishing that the request was posted by you on that date or that it was subsequently received by the Department. Accordingly, I decline to find the Department in violation of the APRA for failing to timely respond to a request for records it alleges it never received.<sup>1</sup>

The Department's response to your complaint further asserts that you are not entitled to the information you are seeking. The Department asserts that the classification records of another offender incarcerated at the facility are confidential and may be withheld for reasons of safety and institutional security. The Department does not appear to have provided you with a copy of this response as a response to your record request. Having now received a copy of your request with a copy of the complaint provided by this office, the Department is obligated to provide you with a written response to the request. A response to a record request that denies the request must include a citation to the specific statutory provision permitting the nondisclosure. *See* IC 5-14-3-9(c)(2)(A). Accordingly, having now received your request, the APRA requires that the Department respond to you in writing and include within that response a reference to the statutory exemption supporting its nondisclosure of records responsive to your request.

---

<sup>1</sup> Of course, if evidence is later developed in any civil action brought pursuant to Indiana Code 5-14-3-9 to establish that the Department received but failed to timely respond to the request, its failure to timely respond would violate the APRA. IC 5-14-3-9(b).

## CONCLUSION

For the reasons set forth above, I find that the Department did not violate the APRA for the reasons alleged in your complaint. However, the Department's written response now that it has your request must include a citation to the specific statutory exemption supporting any nondisclosure of responsive records. Failure to respond in writing and with citation to the specific statutory exemption authorizing any nondisclosure of records will constitute a violation of the APRA.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Ms. Pam Pattison  
Mr. Richard Larsen