

April 19, 2004

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

*Re: 04-FC-46; Alleged Violation of the Access to Public Records Act by the  
Wabash Valley Correctional Facility*

Dear Mr. Hunt:

This is in response to your formal complaint alleging that the Wabash Valley Correctional Facility (Prison) 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 Prison's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Prison did not violate the APRA as alleged in your complaint.

#### BACKGROUND

According to your complaint, on February 13, 2004, you sent the Prison a written request for records. The request was addressed to public information officer, and sought a copy of the "log books for G-Cell house ... for the date December 23, 2003, for the daily events on the left wing of G-Cell house and also for the right wing for G-Cell house." On March 15, 2004, having received no response to the request, you prepared and submitted this complaint and sought expedited review. You assert that the failure to timely respond violates the APRA. In response, the Prison denies that it received a copy of your request for records. Having now received your request with a copy of the complaint provided by this office, the Prison further asserts that your request is not reasonably specific, but it does not state in what manner the request is deficient. In any event, the Prison asserts that had it received your request it would have made copies of the log book with information unrelated to your request separated and withheld for safety and security reasons. The Prison further states that you are unable to pay for any copies at this time as you have no funds in your account.

## ANALYSIS

As a threshold matter, your complaint fails to establish a basis for priority status and expedited review pursuant to Indiana Administrative Code 62 IAC 1-1-3. Significantly, you fail to cite to the specific criteria upon which you base your request for expedited status, and it is not otherwise apparent from reviewing the factors how any of them can be asserted to be applicable to your claim. Moreover, you fail to offer any facts establishing a basis for expedited review under any of the criteria set forth in the Indiana Administrative Code.

Neither does your complaint establish a violation of the APRA on the merits. 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 Prison violated the APRA under the facts as alleged in your complaint. The Prison expressly states that it did not receive your request while at the same time acknowledging other requests you have made and it has received. While you provide a copy of a record request dated February 13, 2004, there is no evidence establishing that the request was posted by you on that date or that it was subsequently received by the Prison. Accordingly, I decline to find the Prison in violation of the APRA for failing to timely respond to a request for records it alleges it never received.<sup>1</sup>

The Prison's response to your complaint further asserts that you are not entitled to the information you are seeking. The Prison asserts that your request is not reasonably specific, but it seemingly understands your request enough to be able to identify responsive documents that it stands ready to copy, subject to some redaction for confidential material, and capable of being produced upon payment of the copy fee. Of course, the Prison is entitled to produce a redacted record as long as it cites to the statutory basis for withholding information from that responsive record. *See* IC 5-14-3-9(c)(2)(A). More relevant to this complaint is the Prison's right to charge and collect a copy fee. IC 5-14-3-8. Now that the Prison has your request, it cannot be faulted for failing to produce any responsive record if you cannot pay for the copy requested.

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<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 Prison 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 Prison did not violate the APRA as alleged in your complaint.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Ms. Pam Pattison  
Mr. Richard Larsen