

August 9, 2005

Adrian L. Broome  
D.O.C. #957185  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, IN 47838

*Re: Formal Complaint 05-FC-134; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility.*

Dear Mr. Broome:

This is in response to your formal complaint alleging that the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA").

#### BACKGROUND

On July 12, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-134. In your complaint, you failed to provide any explanation as to the basis of your complaint. You merely described the request that you made to the Facility and stated that you are indigent. You provided a copy of the Facility's response; however, you did not explain why you think the facility has violated the APRA. You did circle "Copy Fee" on the complaint form; therefore, I assume that your complaint is that the Facility's copy fee violates the APRA.

The Facility's response, provided with your complaint, states that "you have no funds in your account balance, required to pay for any copies generated per IC 5-14-3-8(c), consequently no further action will be taken in this matter." Additionally, you were told that if you require a copy of any records that you must submit ten cents per page generated.

Mr. Rich Larsen responded to your complaint, on behalf of the facility, by letter dated July 13, 2005. A copy of that letter is enclosed for your reference. Mr. Larsen stated that he had informed you that you have no funds in your account to pay for any copies generated by your request and that the office was under no obligation to provide copies free of charge.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). The Facility is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(1)(1).

### *Copy Fee*

Under the APRA, a state agency may charge a uniform copying fee that is established by the Indiana Department of Administration (“IDOA”). IC 5-14-3-8(c). The IDOA has established a \$0.10 per page cost for copies. The Facility is part of a state agency and is permitted to charge you \$.10 per page. IC 5-14-3-8(c). The Facility may also require that you pay for copying costs in advance of receiving the copies. IC 5-14-3-8(e).

This issue was addressed in the advisory opinion issued in response to your formal complaint # 05-FC-129. In that opinion I did not find it to be a violation of the APRA for the agency to inform you of the fact that you did not have any funds in your account. The Facility’s response to this request differs slightly from the response addressed in formal complaint # 05-FC-129. In its July 5, 2005 response to your request the Facility stated, “. . . you have no funds in your account balance, required to pay for any copies generated per IC 5-14-3-8(c), *consequently no further action will be taken in this matter.*” It is unclear whether the Facility intended to deny your request based on the lack of funds in your account, or merely intended to inform you that it would not provide the requested copies until payment is received. A better response would state that until the facility receives payment, it does not intend to provide copies.

Additionally, you have again asserted that you are indigent. Once again I will tell you that merely alleging indigency or showing that you were adjudged indigent in a proceeding does not mean that a public agency must waive the copying fee. If you wish to claim indigency for purposes of obtaining records under the APRA free of charge, you must obtain a court order stating that you are indigent for purposes of obtaining records under the APRA.

## CONCLUSION

For the foregoing reasons, I find that the Wabash Valley Correctional Facility did not violate the Access to Public Records Act by informing you of the fee to obtain copies, requiring you to pay the copy fee in advance, and refusing to waive the copying fee.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Rich Larsen