

September 21, 2005

Mr. Fred Peters  
#26498  
Wabash Valley Correctional Facility  
P.O. Box 500  
Carlisle, IN 47838

*Re: Formal Complaint 05-FC-177; Alleged Violation of the Access to Public Records Act by the Miami Correctional Facility*

Dear Mr. Peters:

This is in response to your formal complaint alleging that the Miami Correctional Facility ("Facility") violated the Access to Public Records Act by failing to give you a record. I find that the Facility did not violate the Access to Public Records Act because it did not receive your request.

#### BACKGROUND

Your complaint, filed on August 24, 2005, followed your request to the Facility for several records. Your record request was dated July 17, 2005. You claim that you have not received any response. After sending your complaint to the Facility, I received a letter from Superintendent John R. VanNatta, responding on behalf of the Administrative Assistant Amy Clark to whom you had addressed your request. Mr. VanNatta told me that after a diligent search of the records, it appears that the Facility had not received your request.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). When a public agency receives a written request for a record via U.S. Mail, it is required to issue a response in writing within seven (7) days of the

agency's receipt of the request. IC 5-14-3-9(b). Hence, when you did not receive any response, you understandably considered whether the agency had violated the APRA.

However, the public agency cannot respond to a request for records that it has not received. Hence, the failure of the Facility to respond to your request is not a violation of the APRA. I recommend that you resubmit your request to the Facility.

I also write to explain further about the agency's duty to provide you a record. Your request, at least in part, appears to request that the Facility create a record for you. In particular, I noticed that you were seeking "a list of every red-headed sargent (sic) you had working in M.C.F. in April-May of 2004..."

The Access to Public Records Act requires that an agency that maintains a record make it available for inspection and copying. The APRA does not require an agency to make a new record that fulfills a person's request for information, if no such record exists. It seems unlikely that the Facility maintains a record that records a physical characteristic such as hair color of one or more of its employees. Nevertheless, you are entitled to request such a record, and the Facility would be required to tell you if it does not have such a record. It is not required to create such a record if it does not exist.

#### CONCLUSION

The Miami Correctional Facility did not violate the Access to Public Records Act when it failed to respond to a request for a record that it did not receive.

Sincerely,

Karen Davis  
Public Access Counselor

cc: John R. VanNatta