



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

## PUBLIC ACCESS COUNSELOR

402 West Washington Street, Room W460  
Indianapolis, IN 46204-2745  
Telephone: (317) 233-9435  
1-800-228-6013  
FAX: (317) 233-3091  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 12, 2005

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

*Re: Formal Complaint 05-FC-184; Alleged Violation of the Access to Public Records Act by the Westville Correctional Facility*

Dear Mr. Broome:

This is in response to your formal complaint alleging that the Westville Correctional Facility ("WCF") violated the Access to Public Records Act ("APRA") by failing to respond to your request for public records.

### BACKGROUND

You state that you requested from WCF the home address and telephone number of a former employee of the facility. You also requested the address and telephone number of her new place of employment. You allege that as of the date you filed your complaint it had been 12-15 days since you filed your request and you had not received a response from the agency.

Ms. Elaine Zschoche responded to your complaint, on behalf of the WCF, by letter dated September 14, 2005. A copy of that letter is enclosed for your reference. Ms. Zschoche stated that she did not receive your request for access to public records. She also indicated that she checked with the mailroom, record storage, and personnel offices and none of those areas had received your complaint.

### ANALYSIS

#### *Duty to Respond within Seven Days of Receipt of Request*

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). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The WCF is a public agency for purposes of the APRA. Therefore, if the WCF received your request it was required to respond to your request within seven days of its receipt. The WCF denies having received the request; if it did not receive the request it had no duty to respond. The WCF did not violate the APRA by failing to respond.

*Personnel Records Exemption*

Had the WCF received your request it would not have been required to disclose all of the information that you requested. You indicate that you seek information regarding a former employee of the WCF. You requested information regarding her home telephone number and address, as well as the telephone number and address of her new employment.

Pursuant to IC 5-14-3-4(b)(8), a personnel file of a public employee may be withheld from disclosure at the discretion of the agency. However, the following personnel file information must be disclosed:

- (a) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (b) information relating to the status of any formal charges against the employee; and
- (c) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

IC 5-14-3-4(b)(8). If the information you seek is maintained in the former employee's personnel file, the WCF would be required to disclose to you only the above information as required by IC 5-14-3-4(b)(8).

CONCLUSION

For the foregoing reasons, the Westville Correctional Facility did not receive your request for access to public records, and therefore, did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Elaine Zschoche