



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

November 16, 2005

Chester Wilms
D.O.C # 943-594
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 05-FC-212; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Wilms:

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

BACKGROUND

You allege that you filed a written request for public records with the WVCF on or about October 5, 2005. You state that as of October 14, 2005 you had not received a response to your request from the WVCF. Therefore, you filed this formal complaint with the Office of the Public Access Counselor on October 17, 2005.

Mr. Rich Larsen responded to your formal complaint on behalf of the WVCF by letter dated October 19, 2005. A copy of that letter is enclosed for your reference. Mr. Larsen indicated that he did not receive your request for records. He stated that he has informed you on numerous occasions that a public record request must be sent and addressed to the facility public information officer on the form provided by the facility. Finally, Mr. Larsen indicated that you do not have the funds in your account to pay for any copies generated by your requests for records.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 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.

A request for inspection and copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

IC 5-14-3-3(a).

The WVCF is a public agency for purposes of the APRA. IC 5-14-3-2(1)(1). Therefore, the WVCF is required to respond to a request for public records within seven days of receipt of the request. Mr. Larsen indicated that he did not receive your request. If the WVCF did not receive your request for records it did not have a duty to respond; therefore, the WVCF did not violate the Access to Public Records Act when it did not respond to your request.

Mr. Larsen indicated that you have been told that your requests for public records of the WVCF must be sent to the facility public information officer and must be on the correct form.

In *Opinion of the Public Access Counselor 05-FC-59*, the Public Access Counselor wrote to you:

Because you are subject to rules and regulations of the Facility, in my opinion it is not a denial of access for the Facility to require you to submit your request for records in a certain manner and to a certain person. According to long-standing Facility policy, which you have been made aware of, you are required to submit a request for records to the Facility's public information officer on a specific form if you are requesting a record from any department of the Facility. The request will be processed, and any disclosable records would be made available to you. I recommend that you submit your request to Rich Larsen in accordance with Facility policy.

If you have not correctly submitted your request to the WVCF in the manner required you should do so in order to insure that your request is received.

Although you did not raise the issue, Mr. Larsen asserts that you do not have funds in your account to pay for any copies generated by any requests that are actually received by him. He correctly notes that his office is under no obligation to provide copies free of charge per IC 5-14-3-8(c). It is not a violation of the APRA for the WVCF to inform you of the status of your account when responding to a request for records. The WVCF may not deny your request based solely on the belief that you do not have the ability to pay for copies; however, the WVCF may require that you pay for copying costs in advance of receiving the copies. IC 5-14-3-8(e).

CONCLUSION

For the foregoing reasons, I find that if the Wabash Valley Correctional Facility did not receive your request for records, it did not violate the Access to Public Records Act when it did not respond to the request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Rich Larsen