



STATE OF INDIANA

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August 12, 2009

Kevin Pearson
DOC #863448
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 09-FC-169; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Pearson:

This advisory opinion is in response to your formal complaint alleging the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your requests for copies of records. The Facility's response to the complaint is enclosed for your reference. It is my opinion the Facility did not violate the APRA by not responding to requests it did not receive.

BACKGROUND

You allege that on July 6, 2009 and July 8, 2009 you sent requests to the Facility wherein you requested copies of records. You filed the present complaint on July 28 (postmarked July 28), alleging you had received no response to the requests.

The Facility responded to the complaint by letter dated August 4 from Rich Larsen. Mr. Larsen contends the Facility did not receive your requests. He further provides information regarding where future requests should be sent.

ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Facility is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Facility during regular business hours unless the public records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile (or as this office has said, electronic mail) and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Facility asserts it did not receive your request. If the Facility did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Facility did not receive your request, it did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Rich Larsen, Wabash Valley Correctional Facility