



# STATE OF INDIANA

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August 22, 2011

Mr. Robert L. Holleman  
DOC # 10067  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 11-FC-178; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility*

Dear Mr. Holleman:

This advisory opinion is in response to your formal complaint alleging the Wabash Valley Correctional Facility ("WVCF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Rich Larsen responded on behalf of the WVCF. His response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on June 14, 2011 you submitted a written request to the WVCF's public information office requesting records concerning the number of assaults that had occurred at the WVCF over the last thirty (30) days. Rich Larsen responded to your request in writing on June 18, 2011. Mr. Larsen advised that your request was not so much a request for access to public records as it was a request that the facility undertake a research project on your behalf. As such, the facility was not required to provide copies which did not exist. Mr. Larsen further provided that your request could not be granted per 210 IAC 1-6-2(3)(a) if such a record did exist.

In response to your formal complaint, Mr. Larsen provided that your request was not a request for public records but a request that the WVCF undertake a research project on your behalf. Mr. Larsen further provided that the WVCF had no record responsive to your request and even if there had, such data would not have been made available per 201 IAC 1-6-2(3)(a) and I.C. § 5-14-3-4(b)(23).

## ANALYSIS

The public policy of the APRA states that “(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 WVCF is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the WVCF’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the WVCF responded to your request within the timelines prescribed by the APRA.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

The APRA further provides that a request for inspection or copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). The APRA does not require that a public agency search all of its records for any reference to the information being requested. *See Opinion of the Public Access Counselor 04-FC-38*. Unless required by law, public agencies are under no obligation to create a record that complies with the requesting party’s request. *Id.* Since the WVCF did not maintain a record responsive to your request, it is not required to create a new record; as such the WVCF did not violate the APRA in response to your request.

## CONCLUSION

For the foregoing reasons, it is my opinion that the WVCF did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage  
Public Access Counselor

cc: Rich Larsen, Wabash Valley Correctional Facility