



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

December 5, 2011

Eric D. Smith  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 11-FC-289; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility*

Dear Mr. Smith:

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 formal complaint, you allege that on October 31, 2011, you submitted a written records request for the names and inmate numbers for certain detail workers in section B-307 of the WVCF. You also inquired "why gang members are being given detail jobs." You further allege that the WVCF denied your request made pursuant to the APRA for no valid reason.

In response to your formal complaint, Mr. Larsen noted that you are considered an "offender" pursuant to I.C. § 5-14-3-2(i). Pursuant to 210 IAC 1-6-2-3(A), (C), and (G), an offender of the correctional facility is not entitled to information concerning other offenders. Further, I.C. § 5-14-3-4(b)(23) provides that certain information maintained by the WVCF that concerns or could affect the security of a jail or correctional facility may be withheld from you pursuant to I.C. § 5-14-3-4(b)(23). Mr. Larsen further noted that your request also failed to identify the records sought with reasonable particularity as required by the APRA.

## 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." *See* 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).

The APRA states that a public agency "may not" disclose records "declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute." *See* I.C. § 5-14-3-4(a)(2). I.C. § 11-8-5-2(a) provides that the Indiana Department of Correction ("IDOC") may classify as confidential information maintained on a person who has been committed to the department. Pursuant to this authority, the IDOC has classified several categories of documents as "confidential information," including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. *See* 210 I.A.C. 1-6-2(3)(A), (C), (G). The WVCF has cited 210 I.A.C. 1-6-23(A), (C), (G) in denying your request. In light of your status as an offender who has been committed to the WVCF, it is my opinion that the WVCF did not violate the APRA in denying your request for records regarding other offenders currently housed at the WVCF.

Nothing in the APRA requires an agency to *create* records in response to a request. *See Opinion of the Public Access Counselor 10-FC-56*. Similarly, agencies have not violated the law by failing to provide you with information (or answers to generalized questions) if such information is not contained in the records of the agency. Counselor Davis noted in 2005 that "[a] public agency is not required to compile records to respond to a request for information. If the public agency does not have a record or records that are responsive to a request for a record or for information, the agency may respond by stating that it does not maintain such a record." *See Opinion of the Public Access Counselor 05-FC-66*. To the extent that your request sought information, as opposed to records, the WVCF did not violate the APRA in denying 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 long, sweeping underline.

Joseph B. Hoage  
Public Access Counselor

cc: Rich Larsen, Wabash Valley Correctional Facility