



STATE OF INDIANA

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March 16, 2009

Jesse Anderson
DOC #861361
4409 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 09-FC-56; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Anderson:

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 request for access to records. It is my opinion the Facility has not violated the APRA.

BACKGROUND

You submitted a request for access to the records to the Facility. The request was dated January 21, 2009. I understand the nature of your complaint to be that you have received no response to the request. Your complaint was postmarked on February 9 and received by my office on February 13.

The Facility responded to the request by letter dated March 10 from Administrative Assistant/Public Information Officer Rich Larsen. Mr. Larsen indicates you sent the request to the incorrect department. He further contends that Mr. Lemons gave him the request on March 4 and that Mr. Lemons indicated he had received the request that day. Mr. Larsen responded to your request on March 4, indicating the requested records are not disclosable pursuant to I.C. § 5-14-3-4(b) and 210 IAC 1-6-2(3)(b) through (e).

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 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 contends it received your request by mail and responded to it on the same day. Pursuant to I.C. § 5-14-3-9(b), the response was timely.

Regarding the substance of your request, photographs taken related to a stabbing in the Facility, the Facility denies you access to the records on the basis of I.C. § 5-14-3-4(b) and 201 IAC 1-6-2(3)(b) through (e). The former provides that investigatory records of law enforcement agencies may be withheld at the discretion of the agency. The latter provides that the following records maintained by the Department of Correction (which controls the Facility) are confidential and access to such may not be provided:

- (3) Confidential information shall include, but is not limited to, the following:
 - (A) Offender diagnostic/classification reports.
 - (B) Criminal intelligence information.
 - (C) Information that, if disclosed, might result in physical harm to that person or other persons.
 - (D) Information obtained upon promise of confidentiality.
 - (E) Internal investigation information.
 - (F) All juvenile records.
 - (G) Any other information required by law or promulgated rule to be maintained as confidential.

201 IAC 1-6-2

Based on the foregoing authority, it is my opinion the Facility may not provide you access to the requested records. As such, the Facility did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Rich Larsen, Wabash Valley Correctional Facility