



STATE OF INDIANA

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March 24, 2009

Aaron Isby
DOC #892219
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 09-FC-65; Alleged Violation of the Access to Public Records Act by the Indiana Department of Correction

Dear Mr. Isby:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Correction ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to the complaint is enclosed for your reference. In my opinion the Department has violated the APRA if it received the request and did not respond to the request within seven days.

BACKGROUND

You allege that on February 2, 2009 you mailed to the Department a request for access to records. You allege you have not received a response to the request. Your complaint was postmarked on February 17, and my office received it on February 23.

The Department responded to the complaint by letter dated February 26 from James Wynn. Mr. Wynn indicates that the person to whom you sent the request retired in September 2008 and has not been replaced. Mr. Wynn indicates that all the information you have requested is maintained at the Wabash Valley Correctional Facility.

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 Department 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 Department 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 access to 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 Department does not indicate whether it received the request. If the Department received the request, it would have a duty to respond to the request within seven days, pursuant to I.C. § 5-14-3-9(b). Since the records are maintained at the Facility, the Department's response could contain an indication that you would need to contact your case manager to request access. Or the Department could forward the request to the Facility for response. Nothing in the APRA prohibits the Department from referring you to the Facility to obtain the records, but it is my opinion the Department should have responded to the request.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has violated the APRA if it received the request and did not respond to the request within seven days.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: James S. Wynn, Indiana Department of Correction