

May 7, 2003

Dante Watts
#943166 218-L-Dorm
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: *Advisory Opinion 03-FC-29*; Alleged Denial of Access to Public Records by the Indiana Department of Correction.

Dear Mr. Watts:

This is in response to your formal complaint, which was received on April 23, 2003. You have alleged that the Indiana Department of Correction, Wabash Valley Correctional Facility ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department denied you access to public records with respect to a written request that you made dated April 4, 2003. Ms. Pam Pattison of the Department responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not deny you access to public records with respect to your April 4th public records request.

BACKGROUND

According to your complaint, in a letter dated April 4, 2003, you requested access to public records from the Department. You asked for access to the following:

"All" evidence and state forms and computer letters prepared by Mr. Kevin Gilmore on or around March 29, 2003 through April 3, 2003 to permanently ban Ms. Carrie E. Tompkins as a visitor.

You submitted actual copies of what appears to have been produced to you by Mr. Larsen in response to your public records request:

1. A letter to Ms. Tompkins dated April 2, 2003 notifying her that she is permanently banned as a

visitor under Executive Directive 98-35;

2. A copy of an April 3, 2003 "Denial/Restriction of Visitation Privilege" form signed by Mr. Gilmore; and
3. A copy of a grievance you filed regarding the incident involving Ms. Tompkins dated April 4, 2003.

While you are not specific in your complaint, it appears that you were not satisfied with the documents produced by the Department, so you filed your formal complaint with this Office.

In response to your formal complaint, Ms. Pattison stated that Mr. Larsen provided you with copies of all disclosable documents responsive to your April 4th public records request. She added that you were denied a copy of the Incident Report as it related to an Internal Affairs investigation regarding visitor's trafficking to you and that this is prohibited property, which is not provided to offenders as a safety and security measure authorized under Indiana Code chapter 11-11-2.

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." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. 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 Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). A public agency is generally not required to create new records in order to respond to a public records request. See generally, Ind. Code chapter 5-14-3. A person who has been denied access to public records under the APRA may file an action in circuit or superior court to compel the public agency to allow inspection and copying of the public records. Ind. Code §5-14-3-9(d).

According to your complaint, you sent a request to Mr. Larsen for copies of various public records related to the determination to permanently ban Ms. Tompkins as a visitor to the facility. Mr. Larsen apparently advised you that the Incident Report would not be provided to you because, under the statutes governing the Department, this report is considered prohibited property and offenders are not permitted to receive copies.

The Department has statutory authority under Indiana Code chapter 11-11-2 to place limitations on the types of property that an offender can possess. According to Ms. Pattison, offenders are not

permitted access to various forms under rules and policies adopted under the authority of Indiana Code chapter 11-11-2 so you were not provided with a copy. The APRA is a statute of general application and in some cases the General Assembly has passed more specific statutes that supersede or override the provisions of the APRA. In this case, the Department has statutory authority to limit what you, as an offender may possess. As such, it is my opinion that the Department did not violate the APRA by denying you access to a copy of a Transfer Authority form, because Indiana Code chapter 11-11-2 allows the Department to withhold this public record from you.

CONCLUSION

It is my opinion that the Department of Correction, Wabash Valley Correctional Facility, did not deny you access to public records in violation of the APRA with respect to your April 4, 2003 public records request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: : Ms. Pam Pattison, IDOC w/o enclosure
