

June 23, 2004

Mr. Mark R. Fish, No. 964381  
Wabash Valley Correctional Facility  
P. O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 04-FC-101; Alleged Denial of Access to Public Records by the  
Wabash Valley Correctional Facility*

Dear Mr. Fish:

This is in response to your formal complaint alleging that the Wabash Valley Correctional Facility (Prison) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3), when it failed to produce records in response to your record request. For the reasons set forth below, I find that the Prison did not violate the APRA.

#### BACKGROUND

Your complaint alleges that you made a request for “information” to the Prison seeking the date that a contract physician began treating inmates at the Prison. You do not provide a copy of your request with your complaint. You do provide a copy of the Prison’s response to your request, dated June 9, 2004. In that response, the Prison states that it “does not have the information you requested.” Your complaint characterizes this response as “ludicrous,” and demands an answer to your question.<sup>1</sup>

#### ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the APRA. IC 5-14-3-3(a). A “public record” means any writing, paper, report, study, map, photograph, tape recording or other material that is created, received,

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<sup>1</sup> Indiana Code 5-14-5-8 requires that I immediately forward a copy of any properly filed formal complaint to the public agency that is subject to the complaint. I do so with this opinion. Normally, the complaint is forwarded to the public agency before an opinion is composed in order that the agency be afforded an opportunity to respond and to facilitate resolution of the complaint. While the Prison may certainly prepare and file a response to the complaint, a response is unnecessary to resolution of your claims based on a plain reading of the statutes at issue and the facts asserted in the complaint.

retained, maintained or filed by or with a public agency. IC 5-14-3-2. A public agency is not required to create a record in response to a request, and it is not required to produce a record it does not have. If an agency does not have a responsive record, it should say so, but its failure to produce a record it does not have and is not required to have is not a denial under the APRA.

The Prison's written response to your record request indicates that there are no records responsive to your request. While you find that response to be incredible, your complaint and supporting documents do not establish otherwise. Of course, if you have evidence or can develop evidence to support your claim that documents are being withheld, you are free to pursue your civil remedies under the statute. *See* IC 5-14-3-9, 9(i). Based on the evidence before me, I decline to find a violation of the APRA.

#### CONCLUSION

For the reasons set forth above, I find that the Prison did not violate the APRA in responding to your records request.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. Richard Larsen