

March 22, 2004

Mr. Ricky P. Tobar
DOC No. 995163
Wabash Valley Correctional Facility
P.O. Box 500
Carlisle, Indiana 47838

*Re: Formal Complaint 04-FC-26; Alleged Denial of Access to Public Records by the
Indiana Department of Correction*

Dear Mr. Tobar:

This is in response to your formal complaint alleging that the Indiana Department of Correction (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), by failing to timely respond to your request for records within the time period allotted by statute. A copy of the Department's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Department did not violate the APRA as alleged in your complaint.

BACKGROUND

According to your complaint, on January 6, 2004, you submitted a written request for records to the Commissioner of the Indiana Department of Correction wherein you allegedly sought the "policy & administrative procedures for Operation Director WVC 02-01" and all Department policies exempting the Wabash Valley Correctional Facility. Your complaint alleges that you submitted the request via certified mail, and that the request was received and signed for on January 8, 2004. You do not include a copy of the request or the signed receipt. Your complaint asserts that the Department has failed to respond. The Department asserts that it has no record of having received your request, and further advises that the facility also has no record of you making that request to the facility. The Department further responds that you may request and obtain any existing responsive documents from your facility upon payment of the required copy fee.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of *receipt* of the request. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b). Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. *Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).

I decline to find that the Department violated the APRA under the facts as alleged in your complaint. The Department expressly states that it does not have any record of receiving your request at either the administrative offices of the Department or at your facility. While you suggest that you have evidence that the Department signed for receipt of your request on January 8, 2004, you do not provide a copy of that evidence with your complaint. Of course, if the Department did receive a copy of your request as alleged, it would have been required to respond to your request on or before January 15, 2004, and its failure to do so would violate the APRA. However, absent that evidence, I find that the Department did not violate the APRA. You may submit your request in writing to the Department by written records request to the facility where you are incarcerated. According to the Department's answer to your complaint, if those records exist they will be provided to you upon payment of the required copy fee.

CONCLUSION

For the reasons set forth above, I find the complaint without merit.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Pam Pattison