

April 21, 2004

Mr. Michael Hunt
No. 961894
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, Indiana 47838

*Re: 04-FC-51; Alleged Violation of the Access to Public Records Act by the
Indiana Department of Correction*

Dear Mr. Hunt:

This is in response to your formal complaint alleging that the Indiana Department of Correction (Department) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it failed to timely respond to your request for records. For the reasons set forth below, I find that the Department failed to timely respond to your request in violation of the APRA. I further find that the Department's response did not cite to the statutory exemption supporting nondisclosure as required by the APRA. Finally, I conclude that the Department's nondisclosure is not otherwise contrary to the requirements of law.

BACKGROUND

According to your complaint, on February 17, 2004, you submitted a written request for records to the Department. The request was addressed to a Department classification analyst, and sought population statistics and identifying information for prisoners within certain classifications at the Wabash Valley Correctional Facility. On March 19, 2004, having received no response to the request, you prepared and submitted this complaint challenging the Department's failure to respond. In response to your complaint, the Department has produced a copy of its March 16, 2004, letter to you denying your request for offender classification records. The Department acknowledges that the response was not submitted within seven days of receipt of your request. The denial letter does not cite to the provision of law authorizing the nondisclosure, but the Department's response to your complaint cites Indiana Administrative Code 210 IAC 1-6-2 in support of the denial.

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).

Here, your request was dated February 17, 2004. Assuming it was mailed on that date, the Department is presumed to have received it on February 20, 2004. The Department has offered no evidence or allegation to the contrary. Accordingly, the Department's response to the request was due to be submitted on or before February 27, 2004. You claim that the Department did not respond to your request. The Department has offered evidence to the contrary, indicating that it sent you a denial letter dated March 16, 2004.¹ The Department acknowledges that the denial letter was not sent in a timely manner in violation of the APRA.

In reviewing the denial letter, I note that the Department failed to cite to the statutory provision authorizing the nondisclosure of the requested records. Indiana Code 5-14-3-9(c)(2)(A) requires that a written response denying a record request must cite to the specific statutory basis for withholding the record. The Department's failure to provide the authority for the nondisclosure in its March 16, 2004, letter violates that provision of the APRA.

The Department's continuing nondisclosure is otherwise in compliance with the law. The Department now contends that the information requested is confidential pursuant to Indiana law, specifically, pursuant to Indiana Administrative Code 210 IAC 1-6-2 (declaring confidential offender classification information). In my opinion, the Department's nondisclosure on this basis is proper.

CONCLUSION

For the reasons set forth above, I find that the Department failed to timely respond to your request and failed to cite to the authority supporting its nondisclosure in violation of the APRA. The Department's continuing nondisclosure is otherwise in compliance with the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Pam Pattison

¹ Given the date of your complaint and the date of the response letter, I assume for purposes of this opinion that these documents crossed in the mail.