

May 30, 2006

Mr. Bobby L. Peck  
#865349  
Westville Control Unit  
P.O. Box 557  
Westville, IN 46391

*Re: Formal Complaint 06-FC-86; Alleged Violation of the Access to Public Records Act by the Westville Correctional Facility*

Dear Mr. Peck:

This is in response to your formal complaint alleging that the Westville Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records. I find that the Facility is required to respond to a request for records.

#### BACKGROUND

You filed your formal complaint on April 27, 2006. You allege that you requested records from the Facility and have not received a response. Specifically, you requested the right to inspect and copy 1) the job title or classification of every person that is on the Facility's roster; 2) the gross compensation of every person on the Facility's roster, and 3) the dates when every person on the Facility's roster started working at the Facility. You claim that because the Facility has not responded, you were denied records under IC 5-14-3-9(b). Your request for the record was dated April 17, 2006.

I sent a copy of your complaint to the Facility. As of this writing, I have not received any response.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). The Facility is a public agency under the APRA. IC 5-14-3-2(l). A public agency that receives a request for a record via U.S.

Mail is required to respond within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). Under section 4 of the APRA, personnel files of public employees may be withheld except for the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, and dates of first and last employment, among other things. IC 5-14-3-4(b)(8). A public agency is not required to provide this information from a personnel file generally on all employees or for groups of employees without the request being particularized by employee name. IC 5-14-3-4(b)(8). Hence, if the information that you requested is maintained as personnel file information, then the Facility could have denied you the information under IC 5-14-3-4(b)(8) because you did not particularize your request by employee name. If the information you requested is not maintained in the employees' personnel files, but rather exists in a report or other document, the record should have been disclosed to you, with any social security numbers redacted pursuant to IC 5-14-3-4(a)(12).

A public agency may deny a written request for a record, if the denial is in writing and if the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

The Facility did not rebut your allegations that the Facility received and failed to respond to your request for the records. I find that the Facility's failure to respond to your request was a denial of access under the APRA, and its continuing failure to respond constitutes a continuing violation of the APRA actionable in court under IC 5-14-3-9(e).

## CONCLUSION

For the foregoing reasons, I find that the Westville Correctional Facility violated the Access to Public Records Act when it failed to respond to your request for records.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Elaine Zschoche