

April 3, 2008

George Wilson
DOC #918837
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838-1111

Re: Formal Complaint 08-FC-87; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Wilson:

This is in response to your formal complaint alleging the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by not responding to your request for records. The Facility's response to the complaint is enclosed for your reference. It is my opinion the Facility did not violate the APRA.

BACKGROUND

You allege that on or about March 17, 2007 you requested from the Facility a copy of a contract between USRC and the Facility. You submitted your complaint on March 28, and I received it on March 31, alleging the Facility had not responded to your request.

The Facility responded to your complaint by letter dated April 1 from Richard Larsen of the Facility. Mr. Larsen indicates the Facility did not receive your request. Mr. Larsen further indicates that once he received a copy of the complaint from this office, he learned the Facility does not maintain a copy of the contract you requested. He provides the name and contact information of the agency you should contact to seek a copy of the record.

ANALYSIS

The public policy of the APRA states, "(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. The Facility is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Facility

during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile, and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Facility asserts it did not receive your request. If the Facility did receive your request, it would have a duty under the APRA to respond within seven days of receipt. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Facility did not receive your request, it did not violate the APRA by not responding.

Although the Facility did not originally receive your request, Mr. Larsen has searched for the record and found the Facility does not maintain the record. He has provided the contact information for the agency which might maintain the record. You will find the information in the enclosed response from Mr. Larsen.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Rich Larsen, Wabash Valley Correctional Facility