



# STATE OF INDIANA

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October 26, 2009

Mr. Derrick J. Kay, DOC # 978492  
Wabash Valley Correctional Facility  
6908 South Old Hwy.  
P.O. Box 500  
Carlisle, IN 47838

*Re: Formal Complaint 09-FC-217; Alleged Violation of the Access to  
Public Records Act by the Wabash Valley Correctional Facility*

Dear Mr. Kay:

This advisory opinion is in response to your formal complaint alleging the Wabash Valley Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, my opinion is that the Facility did not violate the APRA.

## BACKGROUND

According to your complaint, you allege that you requested access to records regarding the criminal history and conduct history of correctional officers who work in the Department of Correction ("DOC"). You state that the Facility told you that records regarding DOC staff are not subject to disclosure pursuant to I.C. § 5-14-3-4(b)(23).

My office forwarded a copy of your complaint to the Facility for a response. Mr. Rich Larsen, the Facility's administrative assistant/public information officer, responded on behalf of the Facility. I have enclosed that communication for your review. In it, Mr. Larsen states that the records you requested are not disclosable pursuant to I.C. § 5-14-3-4(b)(8) and I.C. § 5-14-3-4(b)(23).

## 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." I.C. § 5-14-3-1. The Court meets the definition of a "public agency" under the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the

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

It is my understanding based on the Facility's assertion and based on your mailing address that you are confined in a penal institution as the result of the conviction for a crime. As such, you are an "offender" for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure for information related to employees of correctional facilities, specifically excepting the following:

- Records requested by an offender that:
  - (A) contain personal information relating to:
    - (i) a correctional officer (as defined in IC 5-10-10-1.5);
    - (ii) the victim of a crime; or
    - (iii) a family member of a correctional officer or the victim of a crime; or
  - (B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23). Thus, to the extent you are requesting personal information relating to a correctional officer or family member of a correctional officer or records that concern or could affect the facility's security, the Facility acts within its discretion when it denies access to such records. The Facility bears the burden of proof to sustain the denial. *See* I.C. § 5-14-3-1. In my opinion, the Facility will be able to bear that burden.

Further, the APRA provides a discretionary exception to disclosure for most personnel file information. While certain personnel file information must be disclosed, the exception provides that the subdivision requiring such disclosure "does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name." I.C. § 5-14-3-4(b)(8). In other words, the Department is not required to provide you with the requested information because you have requested the information generally on employees of the facility.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Facility did not violate the APRA when it denied your request.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Rich Larsen, Wabash Valley Correctional Facility