



STATE OF INDIANA

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August 22, 2011

Mr. Robert L. Holleman
DOC # 10067
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 11-FC-184; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Holleman:

This advisory opinion is in response to your formal complaint alleging the Wabash Valley Correctional Facility ("WVCF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Rich Larsen responded on behalf of the WVCF. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on July 1, 2011 you submitted a written request to the WVCF to inspect/view/copy any records concerning apprenticeship programs provided at the WVCF that receive funds from the Department of Labor. Rich Larsen responded to your written request in writing on July 6, 2011. Mr. Larsen provided that the WVCF is charged with the authority and discretion to ensure the safety and security of the facility and the offenders under its control. In this regard, Indiana law provides that the facility with the authority to limit your movement and access within the facility. The effect of the law restricts you access to inspect public records which are kept outside of the facility where you are housed. The information you have requested to inspect would, if available, would be maintained in the WVCF Administration Building. That being said, the WVCF Business Office has indicated that there are no records responsive to your request.

In response to your formal complaint, Mr. Larsen provided that there were no records responsive to your request. If the information had existed, the WVCF would have had the authority to limit your access to inspect the records beyond the maximum-security area where you are housed, due to your status as an offender.

ANALYSIS

The public policy of the APRA states that “(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 WVCF is 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 WVCF’s public records during regular business hours unless the 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. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the WVCF responded to your request within the seven-day time period required by the APRA.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Thus, the WVCF did not violate the APRA by failing to produce records when no such records existed.

In regards to the WVCF limiting your access to inspect records outside of the maximum-security facility where you are housed, the APRA does not require the Department of Correction to make special arrangements to allow an incarcerated individual to inspect public records in person. *See Opinion of the Public Access Counselor 10-FC-329*. Counselor Hurst provided in a 2004 opinion:

Circumstances may exist where physical inspection of a record is not practical or even possible, and reasonable access can only be accomplished through production of a copy of the record. Such is the case here. As an incarcerated offender, it is not possible for you to appear at a public agency during its normal business hours and

inspect the records of that agency. *See* I.C. §5-14-3-3(a).
Your status is no less significant when seeking to inspect
the records of the facility where you are incarcerated.”

Opinion of the Public Access Counselor 04-FC-43. As such, if the WVCF did have records responsive to your request, it was under no requirement to make special arrangements to allow the records to be inspected in person.

CONCLUSION

For the foregoing reasons, it is my opinion that the WVCF did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and "H".

Joseph B. Hoage
Public Access Counselor

cc: Rich Larsen, Wabash Valley Correctional Facility