



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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July 16, 2012

Kohl A. Shallenberger
DOC 121329
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-188; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Shallenberger:

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.* Rich Larsen provided a written response to your formal complaint on behalf of the Facility. His response is enclosed for your reference. I have granted your complaint priority status pursuant to 62 Indiana Administrative Code 1-1-3.

BACKGROUND

In your formal complaint, you allege that on June 8, 2012, you submitted a written request to inspect and copy certain records maintained by the Facility. On June 8, 2012, Mr. Larsen responded to your request in writing and provided that you would need to submit your request on the Request for Access to Public Record form made available to you in the library. Further, pursuant to I.C. § 5-14-1 and Department of Correction Policy 00-01-101, the request must be addressed to the Facility's Public Information Officer. Mr. Larsen noted that prior to the disclosure of any records, you must provide the necessary funds to cover the \$.10 per page fee charged by the Facility pursuant to I.C. § 5-14-3-8(c). Lastly, it would appear that many of the records that you seek are not subject to disclosure pursuant to I.C. § 5-14-3-4(b)(8) and I.C. § 5-14-3-4(b)(23). You believe that the Facility has failed to comply with the requirements of the APRA in denying your request and acted maliciously towards you and other parties who have made records requests of the Facility in the past.

In response to your formal complaint, Mr. Larsen advised that after the Facility responded to your June 8, 2012 request, the Facility has yet to receive any additional correspondence or requests from you. Upon receipt of the request in its proper form, the Facility will respond at that time.



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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.” *See* I.C. § 5-14-3-1. The Facility is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Facility’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* 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 twenty-four 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 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 Facility responded to your request within seven (7) days of its receipt as required by section 9 of the APRA. As such, it is my opinion that it complied with the requirements of the APRA in responding to your request.

Under the APRA, an agency may require that public access requests are submitted on a particular form. Specifically, the APRA provides that “[a] request for inspection or copying must: (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.” *See* I.C. § 5-14-3-3(a). The Facility notified you upon receiving your request that you would need to fill out the proper form in making a request for records. Accordingly, it is my opinion that the Facility did not violate the APRA in response to your request. I would encourage you to submit your request for records to the Facility on the proper form. Upon resubmission of your request, you should be aware of the following provisions under the APRA.



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The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. The fee for copying documents may not exceed \$.10 per page for copies that are not color copies or \$.25 per page for color copies; or the actual cost to the agency of copying the document. *See* I.C. § 5-14-3-8(d)(1)-(2). A public agency may require a person to pay the copying fee in advance. *See* I.C. 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124.*

The APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA's disclosure requirements, except for:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion.

Lastly, it is my understanding based on your mailing address that you are confined in a penal institution. 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 to an "offender" for a record that contains information the following information:

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);



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- (ii) a law enforcement officer (as defined in IC 35-31.5-2-185);
 - (iii) a judge (as defined in IC 33-38-12-3);
 - (iv) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), a judge (as defined in IC 33-38-12-3), or a 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).

To the extent that you seek records that are contemplated under I.C. § 5-14-3-4(b)(23), the Facility would retain discretion under the APRA to deny you request.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Rich Larsen