

August 6, 2002

Mr. Robert Keeby
#851765 E106
P.O. Box 1111
Carlisle, IN 47838

Re: Advisory Opinion 02-FC-30; Alleged Denial of Access to Public Records by the Indiana Department of Correction, Wabash Valley Correctional Facility.

Dear Mr. Keeby:

This is in response to your formal complaint, which was received on July 18, 2002. You have alleged that the Indiana Department of Correction, Wabash Valley Correctional Facility ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department failed to respond to your public records request. Ms. Pam Pattison of the Department responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did not violate the APRA with respect to the your June 30, 2002 public records request.

BACKGROUND

According to your complaint, in a letter dated June 30, 2002, you requested the opportunity to inspect and obtain copies of the following documents from the Department:

1. Recreation Commissary fund balance sheets, State Form 16916, [Recreation Fund Balance Sheet] for fiscal years 2000, 2001 and 2002, including bank statements and the fund operating statement; and
2. Request for Recreation Fund Purchase, State Form 45029, for fiscal years 2000, 2001 and 2002.

You delivered this request, presumably by hand-delivery, to Ms. Carol McCammon, of the Department. You claim that you received no response to your request and filed your formal complaint with this Office on July 18, 2002.

In her response, Ms. Pattison stated that Ms. McCammon never received your request. Ms. Pattison stated that if you were to provide a written request to Ms. McCammon's office, that request will be honored.

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." Ind. Code § 5-14-3-1. The Department is clearly a public agency for the purpose of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a written request that has been hand-delivered within twenty-four (24) hours after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it appears that the Department did not receive your June 30th request. The fact that you received no response to a request that was never received is not a violation of the APRA. It is my opinion, therefore, that the Department did not violate the APRA with respect to your public records request of June 30, 2002. As Ms. Pattison suggested, you should submit a written request to Ms. McCammon's office and the Department will honor it.

CONCLUSION

It is my opinion that the Indiana Department of Correction, Wabash Valley Correctional Facility, did not violate the Access to Public Records Act with respect to your June 30, 2002 request for public records because the Department never received that request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Pam Pattison, DOC