



STATE OF INDIANA

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February 12, 2009

Aaron Isby
DOC #892219
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 09-FC-25; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility

Dear Mr. Isby:

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) by failing to respond 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 by not responding to a request it did not receive.

BACKGROUND

You allege that on January 5, 2009 you submitted a request to the Facility for a copy of your "detail credit time calculation report." You allege the Facility failed to respond to the request.

The Facility responded to the complaint by letter dated January 20. The Facility contends it did not receive your request. Upon receipt of a copy of the present complaint, Public Information Officer Rich Larsen contacted the appropriate department and located the requested records. The Facility will make the copies available to you upon payment of the statutorily allowed copy fees.

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 Facility is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). 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.

The Facility has now retrieved any records responsive to your request and will provide those to you upon receipt of payment totaling eighty cents.

CONCLUSION

For the foregoing reasons, it is my opinion the Facility did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Rich Larsen, Wabash Valley Correctional Facility