

September 30, 2002

Mr. Howard Steele  
#875196 E-105  
P.O. Box 1111  
Carlisle, IN 47838

Re: Advisory Opinion 02-FC-45; Alleged Denial of Access to Public Records by the Indiana Department of Correction, Wabash Valley Correctional Facility.

Dear Mr. Steele:

This is written in response to your formal complaint, which was received on September 16, 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 has refused to comply with your request. Ms. Pam Pattison, Director of Media and Public Relations for 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 has not denied you access in violation of the APRA since you did receive a timely response to your request. There is no time for production set forth in the APRA but it is my opinion that the Department has the burden of showing that the time was reasonable under the circumstances.

## BACKGROUND

According to your complaint, in a letter dated September 3, 2002, you requested copies of the licenses for all licensed barbers who cut hair at the Wabash Valley Correctional Facility. On September 12th you sent a formal complaint to this Office alleging that Mr. Craig Hanke, Superintendent at the facility, refused to comply with your request.

In her response, Ms. Pattison provided a copy of a memorandum dated September 5, 2002 from Administrative Assistant Rich Larsen acknowledging receipt of your request on September 4th. In addition, Mr. Larsen advised you that he was in the process of compiling the requested information and that he would provide it to you as soon as possible. It is the Department's position that your complaint was unwarranted.

## 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 purposes 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). The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1.

It is the responsibility of the public agency to respond to requests for access to 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. For requests that are made in person, a denial is deemed to have occurred if

1. the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or
2. twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made; whichever occurs first.

Indiana Code §5-14-3-9(a). If twenty-four (24) hours elapse and a requestor does not receive any response, a denial is deemed to have occurred. Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in 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).

According to your complaint, you made a request to Mr. Hanke, which was dated September 3, 2002. The file stamp from the Department indicates that Mr. Hanke's office received your request on September 4th. The next day, Mr. Larsen sent you a memorandum advising you that your request had been granted, but that he had to compile the information for you. Since the Department did respond to your request within twenty-four (24) hours after receiving it, there was no denial of access under the APRA.

With respect to the time for production, it is my position that public agencies must produce public records within a reasonable time period given the nature of the request. The burden lies with the Department to show that the time period for producing the public records is reasonable. You filed your formal complaint on September 12th, one week after the date of Mr. Larsen's memorandum. This may or may not be a reasonable period of time based upon your request, but I do not have any information to indicate that it was not reasonable. I have not been advised whether you have received the information since the filing of your formal complaint. If you have not yet received the information you requested, you may want to seek your remedies under Indiana Code section 5-14-3-9.

## CONCLUSION

It is my opinion that the failure to produce public records in response to your September 3, 2002 public

records request did not violate the APRA as there is no stated time for production under the statute. The burden lies with the Indiana Department of Correction, Wabash Valley Correctional Facility, to show that the time for production was reasonable under the circumstances.

Sincerely,

Anne Mullin O'Connor

Enclosure cc: Ms. Pam Pattison, DOC w/o enclosure