

May 21, 2008

Shavaughn Wilson-El  
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PO Box 1111  
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*Re: Formal Complaint 08-FC-117; Alleged Violation of the Access to Public Records Act by the Wabash Valley Correctional Facility*

Dear Mr. Thomas:

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) by denying you access to personnel records containing information about certain employees at the WVCF. I have enclosed a copy of the WVCF’s response to the complaint for your reference. It is my opinion the WVCF, at least until July 1, 2008, is required to disclose certain personnel file information when the request is particularized by employee name.

#### BACKGROUND

In your complaint you allege you submitted a request dated April 1, 2008 to the WVCF for the names, job titles, work experience, and other information related to employees at the WVCF. You submitted with the request a list of the 68 employees about whom you requested the personnel file information. The WVCF denied your request by letter dated April 8, citing I.C. § 5-14-3-4(b)(8) and (10). You mailed this complaint on May 5, and I received it on May 7.

The WVCF responded to your complaint by letter dated May 13 from Rich Larsen, Public Information Office for WVCF. Mr. Larsen asserts the records you requested were withheld from disclosure pursuant to I.C. § 5-14-3-4(b)(10), regarding an exemption for disclosure for documents which contain administrative or technical information that would jeopardize a record keeping or security system. Mr. Larsen contends that because of the serious safety and confidentiality concerns associated with allowing offenders to have access to personal information related to the staff, WVCF will not provide such information. Further, Mr. Larsen asserts the exception for personnel file information in I.C. § 5-14-3-4(b)(8) which indicates that

the APRA does not require an agency to disclose personnel information generally for groups of employees.

## 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 WVCF is clearly a public agency. I.C. § 5-14-3-2. As such, any person has the right to inspect and copy the public records of WVCF 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).

Personnel files of public employees may be withheld except for the following, which must be disclosed:

(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.

However, all personnel file information shall be made available to the affected employee or his representative. *This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.*

I.C. § 5-14-3-4(b)(8). (Emphasis added)

To the extent the records you seek are maintained in employee personnel files, the APRA does not require an agency to disclose personnel information generally for groups of employees. I.C. § 5-14-3-4(b)(8). Here, though, you have particularized the request by employee name. As such, the WVCF cannot deny the request based on the premise that it is a request for personnel information generally on all employees or for groups of employees. It is my opinion that exception, found in I.C. § 5-14-3-4(b)(8), prevents a request, for example, for "all personnel file information for all officers employed with the Department of Correction." In my opinion such a request would be a general request for information about a group of employees without being particularized by employee name. Because your request was particularized by employee name, it is my opinion the information required by I.C. § 5-14-3-4(b)(8) must be disclosed.

The WVCF further claims an exception to disclosure based on I.C. § 5-14-3-4(b)(10), which exempts documents which contain administrative or technical information that would jeopardize a record keeping or security system. The Indiana Court of Appeals addressed this exception in *City of Elkhart v. Agenda*, 683 N.E.2d 622 (Ind. Ct. App. 1997). There the requested information was in the form of telephone numbers. The court did not agree that telephone numbers were technical or administrative information, defining "technical" as "of or

relating to technique" and "marked by or characteristic of specialization" and defining "administrative" as "of or relating to administration." *Id.* at 626-627. Similarly, the information requested here, personnel information for employees, is not technical or administrative. Further, certain personnel information is specifically required to be disclosed under I.C. § 5-14-3-4(b)(8), when the request is particularized by employee name.

I would note that the General Assembly in the 2008 legislative session addressed the issue presented here and added to I.C. § 5-14-3-4(b) the following exception to disclosure:

- (23) 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);
      - (ii) the victim of a crime; or
      - (iii) a family member of a correctional officer or the 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)

In other words, as of July 1, 2008, the effective date of this legislation, the WVCF will be able to exercise its discretion to withhold personal information relating to a correctional officer as well as records that could affect the security of the jail or facility.

#### CONCLUSION

For the foregoing reasons, it is my opinion the WVCF, at least until July 1, 2008, is required to disclose personnel file information when the request is particularized by employee name.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Rich Larsen, Wabash Valley Correctional Facility