
OPINION OF THE PUBLIC ACCESS COUNSELOR

ROBERT LEE HOLLEMAN,
Complainant,

v.

WABASH VALLEY CORRECTIONAL FACILITY
Respondent.

Formal Complaint No.
17-FC-153

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Wabash Valley Correctional Facility (“Facility”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1-10. Public Information Officer Rich Larsen, responded on behalf of the Facility. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 6, 2017.

BACKGROUND

On May 12, 2017, the Complainant submitted a public records request to the Facility for a copy of a file pursuant to a grievance he had previously filed. The Complainant presupposes there are several emails between Facility staff members which should have been in the grievance file yet were omitted.

On June 14, the Facility denied the request, identifying the emails as deliberative materials. The Complainant somehow received the emails and challenges their propriety as it pertains to the grievance process. The formal complaint appears to be the omission of the emails from the grievance file itself.

ANALYSIS

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 Wabash Valley Correctional Facility is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2(n). So, any person has the right to inspect and copy the Facility’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See* Ind. Code § 5-14-3-3(a).

If there is a standard operating procedure for what is contained in a grievance file, it is unknown to this office. After reviewing the Policy for the Offender Grievance Process 00-

02-301, it did not become any clearer. But for anecdotal purposes, I will liken it to a personnel disciplinary investigation. The complaint, supplemental documentation, and end result of the investigation typically are included in a disciplinary file. Any notes, communication or deliberative material of an investigator(s) are not. Therefore, it stands to reason that a grievance file would not contain any underlying emails regarding the grievance. An agency has the discretion to include any materials it chooses in any file it chooses, so long as it is maintained and accessible upon request (unless it falls into an exemption category). Under APRA, the definition of *deliberative material* includes:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

See Ind. Code § 5-14-3-4(b)(6). It appears as if the emails in question fall under this definition. They may be poor quality decisions or indicative of inappropriate action, but they are deliberative nonetheless. This Office is not the forum to pass judgment on the content of a record, only its accessibility. Because the records are deliberative, they may be withheld.

CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor the Wabash Valley Correctional Facility did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor