



STATE OF INDIANA

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July 12, 2011

Mr. Glenn R. Cornett
Indiana State Prison, No. 6678
One Park Row
Michigan City, IN 46360

*Re: Formal Complaint 11-FC-148; Alleged Violation of the Access to
Public Records Act by the Indiana Parole Board*

Dear Mr. Cornett:

This advisory opinion is in response to your formal complaint alleging the Indiana Parole Board (the "Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Board's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on May 16, 2011, you sent the Board a records request seeking information regarding, apparently, every prisoner who has appeared before the parole board. In response to your complaint, the Board states that it never received your request. Even if the Board had received your request, however, the Board does not maintain the information you seek. Rather, you should submit a request to the Indiana Department of Correction's ("DOC") Records Division.

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." I.C. § 5-14-3-1. The Board is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Board's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Board maintains that it did not receive your request. If the Board did receive your request, the agency had 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 Board did not receive your request, it did not violate the APRA by not responding. *See Opinion of the Public Access Counselor 09-FC-44.*

Moreover, if the Board does not maintain the records you requested, the Board did not violate the APRA by failing to produce such records to you. Public agencies that have no records responsive to a public records request do not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61.* Moreover, the APRA does not obligate the Board to create new records to satisfy a request. *See, e.g., Opinion of the Public Access Counselor 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”)

The Board states that some of the information you seek might be maintained by the DOC, so I would encourage you to submit a request to its Records Division. However, I note that under I.C. § 11-8-5-2(a), the DOC may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. The DOC has classified several categories of documents as “confidential information,” including information that, if disclosed, might result in physical harm to that person or other persons. 210 I.A.C. 1-6-2(3)(E). In previous matters, the DOC has stated that it does not release parole information because doing so might lead to harassment of the parolee. Based on that information, the public access counselor has opined that the DOC is justified in withholding such records under 210 I.A.C. 1-6-2(3)(E). *Ops. of the Public Access Counselor 10-FC-69; 05-FC-40.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Board did not violate the APRA if it never received your request.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Randall P. Gentry