



STATE OF INDIANA

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September 20, 2010

Mr. Morris D. Garner
DOC #147386
5501 S. 1100 W.
Westville, IN 46391

*Re: Formal Complaint 10-FC-189; Alleged Violation of the Access to
Public Records Act by the Indiana Parole Board*

Dear Mr. Garner:

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

BACKGROUND

In your complaint, you allege that you requested certain records from the Board concerning your parole hearing. Specifically, you sought the following: Preliminary Hearing Waiver, Parole Violation Preliminary Hearing Minutes, Alcohol Test Results, and Drug Test Results. You enclosed a copy of a document the Board provided you labeled Evidence Relied Upon and Findings of Fact. On that document, the Board indicated that the aforementioned records were relied upon by the Board when it made a decision regarding your parole.

In response to your complaint, Board Vice-Chairman Randall P. Gentry states that the Evidence Relied Upon and Findings of Fact form is standardized for all hearings. As a result, not all evidence that is listed on the form is applicable to all cases. After a reasonable search, the Board has determined that it does not maintain the records you sought and, to the best of the Board's knowledge, the records do not exist.

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).

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*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). 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.”)

CONCLUSION

For the foregoing reasons, it is my opinion that the Board did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Randall P. Gentry