



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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April 24, 2012

James A. Howell
DOC 875465
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 12-FC-106; Alleged Violation of the Access to Public Records Act by the Indiana Parole Board

Dear Mr. Howell:

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.* Robert D. Bugher, Chief Counsel, responded on behalf of the Board. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you have submitted a written request to the Board on March 27, 2012. As of April 23, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Board.

In response to your formal complaint, Mr. Bugher advised that in your formal complaint you provide that the request for records was allegedly sent to the Board at 302 W. Washington Street, with no room number referenced. The Parole Board is located at 402 W. Washington St, Room 446; as such the Board has no record of receiving your request. After receiving a copy of your formal complaint, Mr. Bugher obtained copies of all records that are responsive to your request and upon receipt of payment, said records will be provided to you

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." *See* I.C. § 5-14-3-1. The Board is a public agency for the purposes of the APRA. *See* 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. *See* I.C. § 5-14-3-3(a).

The Board maintains that it did not receive your request. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Op. of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Board received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Board received your request and did not respond to it within these timeframes, the Board violated section 9 of the APRA. However, if the Board did not receive your request, it was not obligated to respond to it. Regardless, the Board has advised that upon receipt of your formal complaint, it compiled all records that were responsive to your request. Upon the payment of the respective copying fees, said records will be provided to you; which I trust is in satisfaction of your complaint.

CONCLUSION

Based on the foregoing, it is my opinion that the Board did not violate the APRA if it never received your written request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Robert D. Bugher