



STATE OF INDIANA

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January 14, 2013

Paul Straughn
P.O. Box 502
Mishawaka, Indiana 46546

Re: Formal Complaint 13-FC-01; Alleged Violation of the Access to Public Records Act by the Indiana Medical Licensing Board

Dear Mr. Straughn:

This advisory opinion is in response to your formal complaint alleging the Indiana Medical Licensing Board ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Kristen Kelley, Board Director, responded on behalf of the Board. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on December 20, 2012, you mailed a written request for records to the Board that was received on December 21, 2012. As of December 28, 2012, you further allege that the Board has failed to provide the requested documents or acknowledge the receipt of the request within the seven (7) day time period specified by I.C. § 5-14-3-9. As of January 2, 2013, the date you filed your formal complaint, you still have yet to receive any documents or correspondence from the Board.

In response to your formal complaint, Ms. Kelley acknowledged that your request was received by the Board on December 21, 2012. The Board was closed for the holidays on Monday, December 24, 2012 and Tuesday, December 25, 2012. Ms. Kelley and Ms. Donna Moran were also on vacation during this time, up through January 3, 2013. Ms. Moran was in the process of drafting the Board's initial response to your request when it received your formal complaint.

The delay in responding to your request was not intentional or in bad faith; rather it was the result of the scheduled state holidays and planned vacations. Since receiving your formal complaint, the Board has developed a new procedure to address processing public record requests on the rare occasion that its designated representatives are out of the office. The Board has now contacted you by email and indicated that it will provide

all records that are maintained by the agency that are disclosable and responsive to your request.

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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. For requests tendered by mail, the date of receipt by the public agency is the operative trigger to begin the statutorily prescribed response time. *See* I.C. 5-14-3-9(b). The Board received your written request for records on December 21, 2012. Accordingly, the Board was required to respond to your request in writing by December 28, 2012, which it failed to do so. It is my opinion that the Board acted contrary to the timelines provided under section 9 of the APRA in responding to your written request for records. Further, I do not believe that the Board intentionally violated the APRA in responding to your request, which is demonstrated by the agency’s prompt response to your formal complaint, by adopting procedures to address the receipt of public record requests when designated personnel are not available, and that the Board has made a disclosure of records in response to your request on January 10, 2012.

CONCLUSION

For the foregoing reasons, it is my opinion that the Board acted contrary to the APRA by failing to respond to your written request within the timelines provided by section 9 of the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Kristen Kelley, Donna Moran