



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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January 24, 2013

Robert L. Holleman  
DOC 10067  
4490 Reformatory Road  
Pendleton, IN 46064

*Re: Formal Complaint 13-FC-14; Alleged Violation of the Access to Public Records Act by the Indiana Parole Board*

Dear Mr. Holleman:

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.* Tim Grogg, Chairman, responded in writing to your formal complaint. His response is enclosed for your reference. I have granted your request for priority status pursuant to 62 IAC 1-1-3(3).

## BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Board that was received on January 4, 2013. As of January 18, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Board has failed to respond to your request in any fashion.

In response to your formal complaint, Mr. Grogg advised that the Board received your request on January 8, 2013 to which it acknowledged its receipt in writing on January 14, 2013. The Board has commenced the process of collecting all records that are responsive to your request and will provide those to you in a reasonable period of time.

## 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 (emphasis added). *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.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. Here, the Board advised that it received your written request for records on January 8, 2013, to which the Board acknowledged the receipt of the request in writing on January 14, 2013. You provide that the Board received your request on January 4, 2013 and had yet to respond at the time you filed your formal complaint. Thus, if the Board received your written request for records on January 8, 2013 and responded in writing on January 14, 2013, it complied with the requirements of section 9 of the APRA in responding to your request. Regardless, the Board is aware of your request and has commenced the process of gathering all records that are responsive to it, which I trust is in satisfaction of your formal complaint. The Board would be required to provide all records, minus any exceptions, responsive to your request in a reasonable period of time as required by section 3(b) of the APRA.

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the Board received your written request for records on January 8, 2013 and responded in writing on January 14, 2013, it complied with the requirements of section 9 of the APRA in responding to your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Tim Grogg