

August 28, 2003

Mr. Keith Ware, 5265  
Location C-206  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

Re: 03-FC-65; *Alleged Denial of Access to Public Records by the Indiana Parole Board*

Dear Mr. Ware:

This is in response to your formal complaint, which was received on July 30, 2003. You have alleged that the Indiana Parole Board ("Parole Board") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Parole Board denied you access to public records in response to your July 14, 2003 request for a copy of:

1. Any and all written notifications to victims (sic) family related to my public parole hearings from 1995 to 2001.
2. Any and all written notifications to the Gary, IN Police Department or the Fraternal Order of Police, that was related to my public parole hearings from 1995 to 2001.

Mr. Earl Coleman, Program Coordinator for the Parole Board, responded via a telephone conversation with this Office on July 30, 2003. For the reasons set forth below, it is my opinion that the Parole Board did not deny you access to public records under the APRA since there is no obligation to produce public records that do not exist.

#### BACKGROUND

According to your complaint, on July 14, 2003 you submitted a public records request to the Parole Board. When you did not receive a response to your request you filed your complaint with this Office. In response to your complaint, Mr. Coleman

advised that the Parole Board does not have the records you requested and that your request was forwarded to the Victim/Witness Program.

#### 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.” Ind. Code § 5-14-3-1. Furthermore, “[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” Ind. Code § 5-14-3-1.

The Parole Board is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Parole Board during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). It is my opinion that the 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. I would suggest, however, that in response to future requests the Parole Board advise requestors when no public records exists that satisfy their requests and that the request is being forwarded to another public agency. In this way, the requestor will better understand why no public records have been produced in response to his or her request.

#### CONCLUSION

It is my opinion that the Parole Board did not violate the Indiana Parole Board did not deny you access to public records in violation of the Access to Public Records Act with respect to your July 14, 2003 request. It is not a denial of access under the APRA not to produce public records that do not exist.

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor