

April 3, 2006

Mr. Gary F. Otto  
#905901  
Pendleton Correctional Facility  
P.O. Box 30  
Pendleton, IN 46064

*Re: Formal Complaint 06-FC-48; Alleged Violation of the Access to Public Records Act by the Indiana Bureau of Motor Vehicles*

Dear Mr. Otto:

This is in response to your formal complaint alleging that the Indiana Bureau of Motor Vehicles (“Bureau”) violated the Access to Public Records Act (“APRA”) by refusing to issue a determination in response to your Request for Non-Hearing Administrative Review. I find that the Bureau has not violated the Access to Public Records Act.

#### BACKGROUND

You assert in your formal complaint that you filed your “Request for Non-Hearing Administrative Review” [hereinafter, “Request”] three times—twice in July of 1993 and once in July 1994. You claim that the Bureau has violated the Access to Public Records Act by not issuing a determination that your suspensions were due to clerical error. The suspensions occurred after you failed to provide proof of financial responsibility following motor vehicle accidents. You claim that you filed your latest Request for a determination on February 9, 2006.

I sent a copy of your complaint to the Bureau. The Bureau told me that it had not received any request from you dated February 9, 2006. The Bureau promised to investigate your claim that you had not received a determination on your earlier Requests. Shortly thereafter, on March 9, 2006, the Bureau issued a letter to you indicating that you have not provided proof that you had insurance on each of the dates of your accidents. Because you did not provide proof, the Bureau took administrative action to suspend your driver’s license, pursuant to Indiana Code 9-25-5-2. Under this law, the Bureau could suspend your license without court action.

Furthermore, the Bureau informed you of this determination by letter dated November 28, 2005. Since receiving the March 9 notification, you have written several letters to me arguing the non-responsiveness of the March 9, 2006 letter. You assert that the Bureau has violated the APRA.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A person must identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). The APRA provides the public with the right to inspect and copy any record that has been created, received, retained, maintained, or filed by or with a public agency. *See* IC 5-14-3-2(m). There is no right under the APRA for a person to inspect or copy a record that would have to be created by a public agency in order to satisfy a person's request for action or a determination by the public agency.

You assert that the Bureau had not issued a determination on your Request. Whether or not that is true, the Bureau is not required *under the APRA* to issue a determination to a "Request for Non-Hearing Administrative Review," because this would require the Bureau to create a record that did not exist when you filed your Request. Stated another way, your "Request for Non-Hearing Administrative Review" was not a request for a record under the APRA. In any case, the Bureau has issued a determination by letter dated March 9, 2006, stating that you must file proof that you had insurance on each of the dates you assert that the Bureau suspended your driving privileges.

The Bureau did not deny you a record under the Access to Public Records Act in connection with your "Request for Non-Hearing Administrative Review." I find your complaint to be without merit.

#### CONCLUSION

For the foregoing reasons, the Indiana Bureau of Motor Vehicles did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Joel Silverman