

October 1, 2007

Tyrone Frazier  
Indiana State Prison  
PO Box 41  
Michigan City, Indiana

*Re: Formal Complaint 07-FC-287; Alleged Violation of the Access to Public Records Act by the Indiana Bureau of Motor Vehicles*

Dear Mr. Frazier:

This is in response to your formal complaint alleging the Indiana Bureau of Motor Vehicles ("BMV") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by failing to respond to your request for records. A copy of the BMV's response to your complaint is enclosed. I find that the Indiana BMV of Labor did not violate the APRA.

#### BACKGROUND

In your complaint you allege that you requested from the BMV a copy of records pertaining to any vehicles registered to you in Indiana or in the United States. You submitted your complaint on September 21, and I received it on September 24, alleging the BMV did not respond to your request. You requested priority status for your complaint, alleging you need the requested records for a hearing scheduled in Marion Superior Court on October 3. Pursuant to 62 IAC 1-1-3, your request for priority status has been granted.

The BMV responded to your complaint on October 1. The BMV indicated it received your request and responded to you appropriately that it maintains no records responsive to your request because no vehicles are registered to you and because the BMV does not maintain information related to motor vehicle registration outside the state of Indiana.

#### 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." I.C. §5-14-3-1.

The BMV is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the BMV during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the 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. I.C. §5-14-3-9(b).

Here the BMV received your request and responded. The BMV clerk who sent the response does not remember the date of response, but if it was within the seven days allowed under the APRA, there is no violation of the APRA. The BMV indicated it did not find any records responsive to your request using the name and birth date you provided. Since a public agency cannot produce records that do not exist, the BMV did not violate the APRA by not providing records.

By enclosing copy of an affidavit of indigence, I understand you claim to be entitled to at least one copy of a public record at no charge. There is no provision in the APRA entitling you to copies of public records at no charge. It is possible in some instances the General Assembly may have provided for fee waivers for copies of certain public records. Further, there are instances when a court will issue an order of indigence ordering an incarcerated person to receive copies of certain public records at no charge. In the case of your request to the BMV, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge.

#### CONCLUSION

For the foregoing reasons, I find that the Indiana BMV did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Scott DeVries, Indiana Bureau of Motor Vehicles