

October 24, 2007

Keith Ware  
DOC #5265  
PO Box 41  
Michigan City, Indiana 46361

*Re: Formal Complaint 07-FC-299; Alleged Violation of the Access to Public Records Act by the Indiana Parole Board*

Dear Mr. Ware:

This 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) by not responding to your request for records. The Board's response is enclosed for your reference. It is my opinion the Board did not violate the APRA by not responding to a request it did not receive.

#### BACKGROUND

You do not provide a narrative description of your allegation in your formal complaint. You indicate "did not respond" in the description section of the formal complaint form, so it is my understanding you submitted a request for access to records to the Board on or about September 5, 2007 and did not receive a response. You mailed your complaint on September 24, and my office received it on September 28.

The Board responded to your complaint by letter from Chairman Christopher Meloy dated October 12. Chairman Meloy contends the Board has no record of having received your request and as such could not respond. Chairman Meloy does provide what would have been the Board's response had the Board received your request.

#### ANALYSIS

The public policy of the APRA states, "(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. The Board 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 Board 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, the agency must respond to the request within seven days of receipt. I.C. §5-14-3-9(b).

Here the Board's office asserts it did not receive your request. If the Board did receive your request, it would have a duty under the APRA to respond within seven days of receipt. I.C. §5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Board did not receive your request, it did not violate the APRA by not responding.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Board did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Christopher Meloy, Chairman, Indiana Parole Board