



**STATE OF INDIANA**  
**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR**  
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August 1, 2013

Mr. Michael A. Kelley  
DOC 2569383  
1000 N. Boonville  
Springfield, Missouri 65802

*Re: Formal Complaint 13-FC-221; Alleged Violation of the Access to Public Records Act by the Indiana Parole Board*

Dear Mr. Kelley:

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.* Randall P. Gentry, Vice Chairman, responded on behalf of the Board. His response is enclosed for your reference.

#### BACKGROUND

In your formal complaint, you provide that you have repeatedly requested Certificates of Discharge issued by the Board. As of July 29, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that you have yet to receive any response from the Board.

In response to your formal complaint, Mr. Gentry advised that the Board has no record of receiving your alleged requests. Regardless, the Board has enclosed all records responsive to your request maintained by the agency.

#### 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).

The Board maintains that it did not receive your requests. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Board received your request. Under the APRA, if a 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. *See I.C. § 5-14-3-9(b)*. A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See I.C. §5-14-3-9(c)*. If the Board received your requests and did not respond to it within these timeframes, the Board acted contrary to the APRA. However, if the Board did not receive your requests, it was not obligated to respond to them. Regardless, the Board has enclosed all records responsive to your request, which I trust to be in satisfaction of your formal complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Board did not violate the APRA if it never received your requests.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Randall P. Gentry