



STATE OF INDIANA

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February 4, 2013

Mr. Lawrence E. Greer-Bey
DOC 876141
P.O. Box A
New Castle, Indiana 47632

Re: Formal Complaint 13-FC-32; Alleged Violation of the Access to Public Records Act by the Indiana Parole Board

Dear Mr. Greer-Bey:

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.* Tim Grogg, Parole Board Chairman, responded on behalf of the Board. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that in June 2012 you submitted a written request for records to the Board. In response, the Board informed you that the fee to produce the records would be \$2.60. In July 2012, you submitted payment to the Board via institutional check for the records that had been requested. In September 2012, you submitted a written inquiry regarding the status of your request. As of January 31, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any records from the Board in response to your request.

In response to your formal complaint, Mr. Grogg advised that immediately upon discovering the administrative error that the records had yet to be provided; the records were placed in the mail. The error was discovered prior to receiving your formal complaint. The Board has waived all fees associated with the request and regrets the delay in responding. The Board has taken steps to assure this type of oversight does not occur again in the future.

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).

A request for records may be oral or written. See 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 (7) days of receipt, the request is deemed denied. See I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See I.C. § 5-14-3-9(c).

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. See I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. See I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. See I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. See I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. See *Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. See *Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. See *Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Here, it is my opinion that the Board failed to comply with the requirements of I.C. § 5-14-3-3(b) in providing all records responsive to your request in a reasonable period of time. The Board was in receipt of your payment for the records in July of 2012; the records were not produced until January 2013. The Board immediately upon discovering the oversight submitted the records to you and returned the previously submitted fees. The Board provided that it has taken steps to assure that similar incidents will not occur again in the future.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Board failed to comply with the requirements of section 3(b) of the APRA in providing all records that were responsive to your request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Tim Grogg