



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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March 14, 2016

Mr. DeAngelo Gaines - #979115
Indiana State Prison
1 Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 16-FC-29; Alleged Violation of the Access to Public Records Act by the State of Indiana, Indiana Department of Education

Dear Mr. Gaines:

This advisory opinion is in response to your formal complaint alleging the State of Indiana, Indiana Department of Education (“DOE”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 et. seq. DOE has responded to your complaint via Ms. Kelly Bauder, Esq. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 10, 2016.

BACKGROUND

Your complaint dated January 27, 2016 alleges the Department of Education violated the APRA by failing to respond to your records request. You are attempting to obtain records to determine whether classes you took are equivalent to the Adult High School Equivalency Test (formerly the GED). As of the filing of your complaint, you had not received a response.

On February 17, 2016 the DOE responded. The DOE states it did not receive any requests from you. However, it also notes it is not in possession of records responsive to your request and invites you to contact either the Indiana Department of Correction or the Indiana Department of Workforce Development.

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 Ind. Code § 5-14-3-1. The State of Indiana, Indiana Department of Education is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the DOE’s disclosable public

records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The APRA does not find an agency responsible for responding to a request it did not receive. The DOE has stated it did not receive your request. While this is unfortunate, your request was likely a casualty of the prison mail system, a consequence of which this Office is familiar. Regardless, the DOE has informed you it does not possess any records responsive and has directed you to the proper channels to receive your documents.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Department of Education did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Kelly Bauder, Esq.