



STATE OF INDIANA

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July 10, 2013

Mr. Jerome A. Young
DOC 13960
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 13-FC-193; Alleged Violation of the Access to Public Records Act by the Department of Corrections

Dear Mr. Young:

This advisory opinion is in response to your formal complaint alleging the Department of Corrections ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Douglas Huyvaert, Director of Parole Services, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you submitted a written request to the Department for the copying fee for the Department to provide you with copies of any parole supervision files under Cause No. CR-77-277-A, from 1997-2008. You further requested that you be informed if the Department does not maintain any records responsive to the request. On June 10, 2013, Tim Grogg, Chairman of the Parole Board, advised you that Board does not maintain copies of the records that you seek.

In response to your formal complaint, Mr. Huyvaert advised that all local parole files maintained at the Department's Parole Districts are retained for a three-year period pursuant to the applicable retention schedule. The records you seek are from 1997 through 2008 and have already been destroyed pursuant to said schedule. The only scenario that the Department would maintain records would be if the offender had previously violated parole. In such a scenario, those records would be kept in the offender's Official Pact that is maintained at the facility where the offender is housed.

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 Department 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 Department'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).

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy...."). However, the APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. See I.C. § 5-14-3-4(h). Here, the Department has advised any records responsive to your request would have been destroyed pursuant to the applicable retention schedule (e.g. Department of Correction, Offender Records). If the offender had violated parole, copies of those records would be maintained in the offender's Official Packet which is maintained at the facility in which the offender is housed. The Department maintains procedures for offenders to review their Official Packet. As such, it is my opinion that the Department did not violate the APRA in response to your request.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Department did not violate the APRA in response to your request.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Douglas Huyvaert