



# STATE OF INDIANA

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June 15, 2011

Mr. Scottie R. Edwards  
3038 West 850 South  
Bunker Hill, IN 46914

*Re: Formal Complaint 11-FC-120; Alleged Violation of the Access to Public Records Act by the Indiana Bureau of Motor Vehicles*

Dear Mr. Edwards:

This advisory opinion is in response to your formal complaint alleging the Indiana Bureau of Motor Vehicles (“BMV”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*. The BMV’s response to your complaint is enclosed for your reference.

## BACKGROUND

You allege in your complaint that the BMV violated the APRA, ostensibly by denying your request for “information concerning the registration of [your] 2000 Dodge Stratus. . . .”

In response to your complaint, BMV Staff Attorney Sarah Kamhi states that the BMV has no records of the motor vehicle registration or title record that matches the two pieces of information you provided in your request: a vehicle identification number and license plate number.

## 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.” I.C. § 5-14-3-1. The BMV is 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 BMV’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the BMV states that conducted a search for records responsive to the request you submitted but found none matching the vehicle identification number and license plate number you provided. 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*. Moreover, nothing in the APRA requires an agency to create a new record if that does not already exist. See *Opinion of the Public Access Counselor 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”)

#### CONCLUSION

For the foregoing reasons, it is my opinion that the BMV did not violate the APRA if it has no records responsive to your request.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Sarah Kamhi