



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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- The number of sex offender violators in 2015 and 2016 who were not released “due to the nature and circumstances of their original crime;” and
- The number of “non-sex offender” violators in 2015 and 2016 who were not released “due to the nature and circumstances of their original crime.”

After not receiving any response, the Complainant filed a formal complaint with my Office dated June 15, 2017, which my Office received on June 20, 2017. My Office sent notice of the complaint to the Board on June 21, 2017. My Office received the response of the Board on June 22, 2017. In the response, the Board asserts that the Board did not have any record of the request sent by the Complainant. The Board indicated that the Board would send the 2015 and 2016 Annual Report to the Complainant. The Board also says in the response that the Board does not possess “statistical comparisons of sex offenders who are granted parole versus non-sex offenders granted parole for the years 2015-2016,” because the Board does not “keep statistics on release by offense type” and does not have the requested information to provide to the Complainant.

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.” Ind. Code § 5-14-3-1. The Indiana Parole Board is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Accordingly, any person has the right to inspect and copy the Board’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

My Office is familiar with the difficulties of sending and receiving mail correspondence from correctional facilities. A lack of response because an agency never received a records request sent by an offender is a common complaint received by my Office. Had the Board received the Complainant’s mailed request, the Board would have been required to provide a response acknowledging the request within seven (7) days. *See* Indiana Code section 5-14-3-9(b). However, the Board cannot respond to a request the Board never received. The Board responded to the notice of the complaint the day after my Office sent the notice, and it appears that the Board sent what records it had responsive to the Complainant’s request that same day.

The Board also cannot provide records that do not exist. If the Board had a record or records that included a count of parole violators as described in the Complainant’s request, unless those records were protected from disclosure as confidential or otherwise exempt from disclosure under the APRA, the Board would



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be obligated to provide those to the Complainant. However, public agencies are generally not required to create records that do not already exist. *See Opinion of the Public Counselor 10-FC-56.*

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Indiana Parole Board has not violated the Access to Public Records Act.

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Public Access Counselor

Cc: Antwoin Richmond