



STATE OF INDIANA

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June 7, 2013

Mr. Charles D. Gray
DOC 973245
201 Woodlawn Avenue
Michigan City, Indiana 46361

Re: Formal Complaint 13-FC-144; Alleged Violation of the Access to Public Records Act by the Indiana Department of Corrections

Dear Mr. Gray:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Corrections (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Pamela James, Public Information Officer, respond on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you submitted a written request for records to the Department on or about April 22, 2013. You sought records of Mr. Jack Catron, an alleged employee of the Department, specifically his training experience, disciplinary sanction history, educational background, and related experience as a release coordinator. On April 23, 2013, the Department responded to your request in writing and advised that the agency did not employ an individual by the name of Jack Catron at the Indiana State Prison. Even if the Department did retain such information, you were advised that your request would be denied pursuant to I.C. § 5-14-3-4(b)(23)(A)(i). The Department reiterated in correspondence dated April 30, 2013 that your request would be denied as you were an offender seeking personal information relating to a correctional officer. You believe the Department’s denial violated the APRA.

In response to your formal complaint, Ms. James advised that the Department received your written request on April 22, 2013 to which it responded in writing on April 23, 2013. Ms. James advised that there is no listing for an employee named Jack Catron with the Department who was employed at the Indiana State Prison. Further, even if the Department had such records, it would have denied your request pursuant to I.C. § 5-14-3-4(b)(23)(A)(i).

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 in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven 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. Here, the Department responded in writing to your written request within seven (7) days of the receipt of your request. As such, it is my opinion that the Department complied with section 9(b) of the APRA.

“[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....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. The Department has indicated that it has no listing for an employee named Jack Catron who was employed at the Indiana State Prison. As such, the Department did not violate the APRA by failing to produce a record that did not exist.

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 written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Pamela James