

February 2, 2004

Mr. Larriante J. Sumbry, No. 965137
Indiana State Prison
P.O. Box 41
Michigan City, Indiana 46361-0041

*Re: Formal Complaint 04-FC-01
Alleged Denial of Access to Public Records by the Division of State Court
Administration*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Division of State Court Administration (Division) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it failed to produce records in response to your December 17, 2003, request for records. The Division's response to your complaint is enclosed for your reference. As set forth below, I find that the Division did not violate the APRA.

BACKGROUND

On December 17, 2003, you signed a letter addressed to the Division requesting access to records you assert are maintained by the Division. Specifically, your request sought "1) Division of State Court Administration Annual Report, [and] 2) Complaint Forms." On December 30, 2003, you signed a complaint alleging that the Division violated the APRA by failing to timely respond to your December 17, 2003, records request. The Division responds that it never received the request that is the subject of this complaint, and further establishes that upon receipt of a copy of that request with the complaint, the Division immediately produced responsive documents.¹

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must produce or expressly decline to

¹ I note that you submitted two requests for records to the Division on December 17, 2003. The request that is not the subject of this complaint failed to identify a record being sought, and the Division acknowledges receipt of that request and provides a copy of its response to that request. The timeliness and substance of that response it not before me.

produce any documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. If the agency does not maintain any documents that are responsive to the request, it should indicate that in a timely response to your request. At bottom, when a public records request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. IC 5-14-3-9(b). If that period of time elapses without any response, the request is presumed denied. IC 5-14-3-9(b). When a public records request is denied, the requesting party may bring an action under the APRA (IC 5-14-3-9(d)), or may file a formal complaint with this office (IC 5-14-5-6).

The Division did not receive the request that is the subject of your complaint. Because it did not receive the request, the time for a response was not triggered, and it cannot be found to have violated the APRA by failing to respond to that request in a timely manner. The Division has since responded to that request after having received it from this office as an exhibit to your complaint, and that the response included production of the documents requested.

CONCLUSION

For the reasons set forth above, I find that the Division did not violate the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ronnie L. Miller