

February 23, 2004

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

*Re: Formal Complaint 04-FC-14; Alleged Denial of Access to Public Records by the
Indiana Department of Insurance*

Dear Mr. Sumbry:

This is in response to your formal complaint dated December 12, 2003,¹ alleging that the Indiana Department of Insurance (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it failed to timely respond to your December 1, 2003, request for records. The Department's response to your complaint is enclosed for your reference. For the reasons set forth below, I decline to find that the Department violated the APRA.

BACKGROUND

On December 1, 2003, you signed a letter addressed to the Indiana Department of Insurance requesting access to records you assert are maintained by the Department. Specifically, your request sought to inspect or copy the following records:

- 1) State of Indiana Tort Liability Act;
- 2) Liability Self-Insurance Policy Manual;
- 3) Entities in Indiana Insured by the Risk Management Commission;
- 4) Handbook of Practice and Internal Procedures; and
- 5) Duties/Responsibilities of the Department of Insurance.

The request does not indicate when it was mailed. Neither is there any indication of when the Department received it. On December 12, 2003, you signed the instant complaint. *See Note 1.*

On December 15, 2003, prior to the time this office received your complaint, the Department responded to your request. In a letter dated December 15, 2003, the Department provided information regarding the Indiana Risk Management Commission. A follow-up response was submitted on January 5, 2004. That response referenced the Department's earlier

¹ Your formal complaint was received by this office on January 22, 2004. The complaint was in an envelope directed to the Public Access Counselor, but with an incorrect address. The envelope containing the complaint was thereafter forwarded to this office. Notwithstanding these circumstances, I considered the complaint timely filed.

letter and provided information in response to the remainder of your request. The Department provides copies of these letters as its response to your complaint. The Department's response to your complaint further indicates that it provided copies of these letters to the former staff counsel for this office, apparently in response to an informal request for assistance counsel received from you before the formal complaint reached this office.

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 expressly produce or decline to produce the 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. 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 a response, the request is presumed denied. IC 5-14-3-9(b).

Your record requests bears a date of December 1, 2003. There is no suggestion or evidence of when you mailed the request or when it was received by the Department of Insurance. In the absence of evidence to the contrary, I would normally assume that a request is mailed on the date it is signed, and received three business days after it is mailed. In this case, that presumption would suggest that the Department received the request on December 4, 2003. In that event, the Department's initial response would have been due on December 11, 2003. It was submitted on December 15, 2003.

Given the circumstances surrounding this request and the submission of your complaint, I am not inclined to apply these presumptions to find the Department's response untimely.² You may, of course, pursue further remedies and present evidence in support of your claim. Even assuming that the Department's initial response was not timely, its December 15, 2003, and January 5, 2004, responses did not otherwise violate the APRA and appear to provide information that goes beyond your requests and the Department's obligations under the APRA.

CONCLUSION

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

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Amy E. Strati

² I am not aware of any prior opinion in this matter or regarding this request for records. This opinion controls.