

October 25, 2004

Mr. Larriante J. Sumbry, #965137
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 04-FC-175; Alleged Violation of the Access to Public Records Act by the Indiana Commission on Judicial Qualifications

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Indiana Commission on Judicial Qualifications (“Commission”) violated the Access to Public Records Act (“APRA”) by denying you access to public records. For the following reasons, I find that the Indiana Commission on Judicial Qualifications did not violate the Access to Public Records Act.

BACKGROUND

On September 1, 2004, you requested the following records:

1. a copy of the recent complaint filed on Judge Joan Kouros;
2. the Supreme Court Employee Handbook;
3. ten (10) Pro-Se Packets;
4. a copy of all complaints you submitted to the Indiana Commission on Judicial Qualifications, including a written determination of all findings/conclusions in reference to your August 27 correspondence;
5. information for obtaining pro bono attorneys, Legal Services, and Bar Association Attorneys in LaPorte County;
6. a copy of the Judicial Commission Comprehensive Plan;
7. a copy of the Judicial Commission Ordinance Laws; and
8. a copy of the Judicial Commission’s Complete 2004 Annual Report of Programs/Activities.

On September 8th, the Commission responded to your request. Specifically, the Commission advised you that the recent complaint filed against Judge Kouros and the written determination of all findings/conclusions in reference to your August 27 correspondence had already been sent to you. It also stated that the Pro Se Packets, information for obtaining pro-bono attorneys,

Legal Services, and Bar Association Attorneys in LaPorte County, as well as the Judicial Commission's Comprehensive Plan and Judicial Commission's Ordinance Laws do not exist. The Commission advised you that you could inspect and copy the Supreme Court Employee Handbook at the Division of State Court Administration. The Commission stated that it would be happy to forward to you a copy of all complaints submitted by you, but that you would have to remit the sum of \$55.50, which represents the cost of copying those records, at \$.10 per page. The Commission forwarded to you a copy of the Judicial Commission's 2004 Annual Report of Programs/Activities.

You submitted a formal complaint, which was received by this office on September 24, 2004. Your complaint does not state what part of the Commission's response you found lacking. Nevertheless, I forwarded a copy of your complaint to the Commission, and Ms. Meg Babcock, Counsel, responded. I have enclosed a copy of her response, which includes a copy of the response sent to you on September 8th.

ANALYSIS

The Indiana Commission on Judicial Qualifications is a public agency for purposes of the Access to Public Records Act. Ind. Code §5-14-3-2. Therefore, any person may inspect and copy the Commission's public records during its regular business hours, unless those records are confidential or otherwise non-disclosable. IC 5-14-3-3(9). When a written request for access to public records is submitted to an agency via U.S. Mail, a written response to that request must be made within seven (7) days of the agency's receipt of the request. IC 5-14-3-9. The APRA does not set any time periods for producing public records, only for responding to a request. While the response has not been defined under the APRA, the APRA contemplates a communication to the requestor. *Opinion of the Public Access Counselor* 03-FC-94. If a person is entitled to a copy of a public record, and the public agency that is in possession of the record has reasonable access to a machine capable of reproducing the public record, the public agency must provide at least one (1) copy of the public record to the person. IC 5-14-3-8(e).

Ms. Babcock stated that the Commission would not forward the written determination of all findings/conclusions in reference to your August 27 correspondence because you were already advised that the Commission determined that the judges did not commit ethical misconduct. Ms. Babcock also advised you that the Commission would not forward copies of the recent complaint filed on Judge Kouros because that record had been sent to you on November 10, 2003. This office has held that because IC 5-14-3-8(e) does not obligate an agency to provide multiple copies of a public record so long as one (1) has been provided, an agency is not required to provide a copy of a public copy in response to multiple, identical requests. *Opinion of the Public Access Counselor* 01-FC-07 and 03-FC-77. In other words, if you have already obtained from an agency the record that satisfies your public records request, that agency is not obligated to provide you with another copy of those records. Therefore, the Commission did not violate the Access to Public Records Act by failing to provide the written determination of all findings/conclusions in reference to your August 27 correspondence because it had already been sent to you, thereby satisfying your records request.

A request for public records must be reasonably particular so that the public agency can locate the public records in question. IC 5-14-3-3(a)(1). Your request asks for a "copy of the recent complaint filed on Judge Joan Kouros." Ms. Babcock refused to provide a copy of it to you because it had been provided to you on November 10, 2003. Your request does not specify

whether the “recent complaint” you seek is the most recent one filed by you, the most recent one filed by another person, or the most recent one investigated by the Commission. Furthermore, I do not know which complaint was forwarded to you in response to your request. Therefore, to the extent that the record forwarded to you on November 10, 2003 satisfies your request, the failure of the Commission to provide another copy of that record is not a violation of the Access to Public Records Act. A better response to your request would have stated that no new complaint had been filed since the last complaint that was sent to you on November 10, 2003.

Ms. Babcock advised you that the Pro Se Packets, the information for obtaining pro-bono attorneys, Legal Services, and Bar Association Attorneys in LaPorte County, the Judicial Commission’s Comprehensive Plan, and the Judicial Commission’s Ordinance Laws do not exist. The Court’s failure to provide records to you that it does not maintain is not a violation of the Access to Public Records Act. *Opinion of the Public Access Counselor* 04-FC-153. Ms. Babcock’s response advising you that the Commission does not maintain some of the records you requested fulfilled her response requirements pursuant to the APRA.

Ms. Babcock advised you that the Commission would send a copy of the complaints you submitted for the sum of \$55.50, which represents the copying fee of \$.10 per page. As you have been advised in *Opinion of the Public Access Counselor* 03-FC-133 and 04-FC-153, IC 5-14-3-8, which governs fees generally, permits state and other public agencies to charge a copy fee for copies of documents. Furthermore, a public agency may collect a copy fee in advance of record production. Therefore, Ms. Babcock did not violate the Access to Public Records Act by withholding copies of your complaints pending receipt of your payment for those records.

Next, in response to your request for a copy of the Supreme Court Employee Handbook, the Commission advised you that you may inspect it at the Division of State Court Administration. Therefore, Ms. Babcock has made the Supreme Court Employee Handbook available to you, and has not violated the Access to Public Records Act.

Finally, Ms. Babcock provided a copy of the Judicial Commission’s Annual Report of Programs/Activities,” and did so within seven days. Again, your complaint does not specify which of the Commission’s responses you believe was a denial; however, it is clear that the Commission did not violate the Access to Public Records Act when it provided you with the record you sought.

CONCLUSION

For the foregoing reasons, I find that the Indiana Commission on Judicial Qualifications did not violate the Access to Public Records Act with respect to its response to your September 1st request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Meg Babcock