

March 29, 2004

Mr. William K. Zimmerman
DOC No. 880133
Indiana State Prison
P.O. Box 41
Michigan City, Indiana 46361-0041

*Re: Formal Complaint 04-FC-30; Alleged Denial of Access to Public Records by the
Indiana Department of Correction*

Dear Mr. Zimmerman:

This is in response to your formal complaint alleging that the Indiana Department of Correction (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), by failing to timely respond to your request for records within the time period allotted by statute. A copy of the Department's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Department did not provide you with a timely response to your request. That said, I note that the Department has now provided a response to your request, and has further subsequently responded with a statement that it does not maintain some of the documents requested, and directing you to the prison library where you can inspect or at your expense copy other documents that are the subject of your request.

BACKGROUND

On February 10, 2004, you submitted a written request for records to the Indiana Department of Correction wherein you sought documents regarding urinalysis procedures and funding. You brought the instant complaint when you failed to receive any response to that request. The Department responds that it received your request on February 13, 2004, but notes that it failed to acknowledge receipt of that request. Upon receiving a copy of your complaint, the Department sent you a letter dated March 2, 2004, acknowledging receipt of the request and advising you that it would review Department files to determine whether any responsive documents could be produced. That letter advised you that copies would be provided upon receipt of payment for the copying costs. In a subsequent letter dated March 9, 2004, the Department advised you that it did not maintain some of the documents requested. That letter further directed you to the prison library where you could inspect or at your expense obtain

copies of other documents responsive to your request. According to the Department, you have been previously informed of these facts in response to prior requests.

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 decline to produce or 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 record 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). Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. *Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).

The Department acknowledges that it received your request on February 13, 2004, but failed to provide you with a timely response. The Department's failure to submit a response acknowledging your request within the time required by statute violates the Department's response obligations under the APRA. That said, I note that the Department has since acknowledged your request and has subsequent to that acknowledgment provided you with a substantive response stating that it does not maintain some of the documents requested. A public agency's failure to produce documents that it does not and is not required to maintain is not a denial of a public record in violation of the APRA. The Department's response further advises you where you can review and at your expense copy documents that it does maintain. A public agency is not required to provide you with copies of responsive documents at the public agency's expense. Accordingly, I do not find the Department's subsequent response to your request to be in violation of the APRA.

CONCLUSION

The Department's failure to timely respond to your request violated the Department's response obligations under that statute. The Department's subsequent response is otherwise in conformity with the law.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Pam Pattison