

August 24, 2006

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

Re: Formal Complaint 06-FC-144; Alleged Violation of the Access to Public Records Act by the Indiana Secretary of State

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Indiana Secretary of State violated the Access to Public Records Act by failing to respond to your request for records. I find that the Secretary of State did not violate the Access to Public Records Act.

BACKGROUND

On August 3, 2006, you attempted to file a complaint with the Office of the Public Access Counselor. You mailed your complaint against the Secretary of State to the Office of the Attorney General. After the complaint was referred to the Secretary of State, the Secretary of State referred the complaint to my office. I received it on August 17, 2006. I am required to send a copy of your complaint to the public agency; however, the Secretary of State had reviewed the complaint and responded to it before forwarding it to me. Therefore, I have dispensed with the usual process for notifying public agencies of complaints. *See* Indiana Code 5-14-5-8.

You claim that you requested from the Secretary of State various forms by form number. The letter you sent showing what you requested was dated July 15, 2006, and was addressed to "Dear Public Official." It did not bear an address or name of a public official or public agency. Many of the forms that you listed appear to be tax forms.

The Secretary of State, represented by General Counsel Jerry Bonnet, responded that his office had not received any request for records from you. Therefore, it did not respond to your request. In any case, the Secretary of State does not maintain the forms that you have requested.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). The Secretary of State’s office is a public agency. IC 5-14-3-2(l). If a public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). A public agency does not have to respond to a request that it has not received.

The Secretary of State has told me that it has no record of receiving your request. Therefore, the request for records was not deemed denied by the Secretary of State when the request was not responded to within the seven day timeframe. There was simply no obligation for the Secretary of State to respond when it failed to receive your request.

Now that the Secretary of State is aware of the records you are seeking, the office informs you that it does not maintain these forms. You must request records from the agency that maintains them. I would suggest that you begin your search for these records by writing to the Indiana Department of Revenue. The tax forms you seek may be federal tax forms, but are nevertheless available to you under the Access to Public Records Act if an Indiana public agency maintains them. If no Indiana public agency maintains the forms, your request to a federal agency such as the Internal Revenue Service would not fall under my jurisdiction. This is because the Access to Public Records Act does not apply an agency of the federal government. *See* IC 5-14-3-2(l).

CONCLUSION

For the foregoing reasons, I find that the Secretary of State has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jerry Bonnet