



STATE OF INDIANA

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November 25, 2013

Mr. Derrick Neely-Bay Tarik El

Re: Formal Complaint 13-FC-314; Alleged Violation of the Access to Public Records Act by the Indiana Secretary of State

Dear Mr. Neely-Bey Tarik El,

This advisory opinion is in response to your formal complaint alleging the Indiana Secretary of State ("Secretary") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. Jerry Bonnet, Counsel for the Secretary, responded to your formal complaint. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 28, 2013.

BACKGROUND

Your complaint dated October 28, 2013 alleges the Indiana Secretary of State violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

You allege that you sent the Secretary a request for records on an unidentified date. The records you sought included the following:

The mandate that was issued to the State of Indiana by the United States Congress pursuant to Article 3 section one of the U.S. Constitution, which declared the United States District Court for the Southern District of Indiana as well as the Northern District of Indiana.

In their response, the Secretary argues they never received a response and therefore were not able to produce records responsive to your request. Furthermore, they claim that they are not the custodian of the records you seek and have no records responsive to your request.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Indiana Secretary of State is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Secretary’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

It is unclear as to why your records request was never received by the Secretary. I do acknowledge, however, that unfortunately DOC Offender mail often gets lost due to the nature of the logistical mail considerations of the Department of Correction system. That is not an indictment of DOC, but rather a reality of the situation.

Regardless, if it was lost by the Secretary’s mail reception, the non-response is considered a denial under the APRA for not having responded to you within seven days. This is not a violation of the APRA as they intended to deny the request anyway. The Secretary of State is not a public agency that often fails to respond to requests, so I trust that it was an inadvertent mistake and not intended to prejudice you in any way.

The Secretary of State also contends that it is not the custodian of the records you seek. After scrutinizing your formal complaint, it appears as if the records are not the type that would typically be kept by a Secretary of State. I commend the Secretary for offering several suggestions as to other agencies who may have records responsive to your request.

CONCLUSION

For the foregoing reasons, it is my opinion the Indiana Secretary of State has not violated the Public Records Act, if they truly never received your public records request.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Jerry Bonnet