

November 26, 2003

Larriante Sumbry
965137, C-265
Indiana Department of Correction
Indiana State Prison
P. O. Box 41
Michigan City, IN 46361-0041

Re: Formal Complaint 03-FC-112: *Alleged Violation of the Access to Public Records Act by the Indiana Supreme Court*

Dear Mr. Sumbry,

This is in response to your formal complaint, received on November 3, 2003. In it, you allege that the Indiana Supreme Court (the "Supreme Court") violated the Access to Public Records Act (the "APRA"). Specifically, you allege that you requested public records relating to the Indiana Pro Se Project (the "Project") by letter dated October 20, 2003, and that the Supreme Court failed to respond within seven (7) days. Mr. Anthony Zapata, Esquire, responded in writing to your complaint on behalf of the Project. A copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Project did not deny you access to public records in violation of the APRA.

BACKGROUND

You allege that on October 20, 2003, you sent a letter to Anthony Zapata. You also allege that as of October 30, 2003, you had received no response from the Council. According to the letter you enclosed with your complaint, you requested the following:

- Pro-se project annual report;
- Copy of action plan, "Designing Effect Pro Se Litigation Programs";
- Define the duties and responsibilities of Pro Se Project;
- Manual on Pro Se litigants and rights within the Constitution;
- Indiana Rules of the Court with instructions;

- Pamphlets on discovery, state habeus corpus, parole, pro se practice I, II, sample brief in opposition to a motion to dismiss, sample brief in opposition for motion for summary judgment, tort claim instructions, how to file against a public entity; and
- Pro se project code of ethics, handbook of practice and internal procedures.

In its response, the Project states that it does not have any of the items you requested. The Project included a copy of a letter addressed to you dated October 30, 2003.

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.” Ind. Code § 5-14-3-1. Furthermore, “[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” *Id.*

The Supreme Court does not contest that the Supreme Court or the Project is a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, this opinion assumes application of the APRA and finds that any person has the right to inspect and copy the public records of the Project during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. IC 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. “If a person requests by mail . . . a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request.” IC 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county in which the denial took place to compel the public agency to disclose the public records requested. IC 5-14-3-9(d).

Your only complaint is that the Supreme Court failed to respond to your request for access to public records. The Project enclosed with its response a letter addressed to you dated October 30, 2003. This office calculates the date a public agency receives a request by mail as three (3) days after the date the letter is sent. Although there is no way of knowing when your letter was actually sent, it is dated October 20, 2003. The Project’s response is dated October 30, 2003. Accounting for the three (3) day mail delivery period, the Project responded within seven (7) days after receiving your request, as required by the APRA. Therefore, it is my opinion that the Project did not fail to respond to your request within seven (7) days after receiving your request.

CONCLUSION

It is my opinion that the Project responded to your request within seven (7) days after receiving it as required by the Access to Public Records Act. Therefore, it is my opinion that the Project did not violate the Access to Public Records Act by failing to respond.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Anthony Zapata, Esquire, Indiana Pro Se Project