

December 12, 2003

Mr. Larriante J. Sumbry  
DOC No. 965137, C-433  
Indiana State Prison  
P.O. Box 41  
Michigan City, Indiana 46361-0041

*Re: Formal Complaint 03-FC-120  
Alleged Denial of Access to Public Records by the Gary Police Department,  
Internal Affairs Division*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Gary Police Department, Internal Affairs Division (Department) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it failed to respond to your October 22, 2003, request for records within the time period allotted by statute. The Department has submitted a response to your complaint. In its response the Department notes that the person you directed your records request to is on vacation and unavailable, and the Department is therefore unable to determine whether the Department ever received your request or, if it did, whether the person you directed it to already responded to you. The Department's response to your complaint further purports to respond to your records request. A copy of the response is enclosed for your reference.

The Department's obligation to respond to your records request is triggered by the date it receives that request. Based on the record before me, I cannot determine whether the Department ever received your request or, if it did receive the request, whether the Department failed to timely respond to the request.<sup>1</sup> Although the Department has now clearly responded to your request, if further evidence is developed to demonstrate that the Department received your request and initially failed to respond within seven days of receipt, I would find that the failure to timely respond violated the APRA.

---

<sup>1</sup> Your records request is dated October 22, 2003, but there is no indication of when you mailed it. Assuming you mailed the request on the date you signed it, and further assuming three business days for the Department to receive the request by mail (*Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C)), the Department would not have received the request until October 27, 2003. Thus, assuming the Department received your request, it would have been required to respond in writing within seven days of receipt (IC 5-14-3-9(b), or by November 3, 2003. Your complaint is dated November 5, 2003. A timely response may have crossed in the mail with your complaint.

## BACKGROUND

On October 22, 2003, you signed a letter addressed to Sgt. Thomas Pawlak, Supervisor of the Internal Affairs Division of the Gary Police Department, requesting access to records you assert are maintained by the Department. Specifically, your request seeks the following records and/or information:

- Internal Affairs Division Annual Report;
- Internal Affairs Division Professional Services Contracts;
- Definition of duties and responsibilities of the Internal Affairs Division;
- Types of complaints investigated by the Internal Affairs Division;
- Internal Affairs Division Handbook of Practice and Internal Procedures;
- Internal Affairs Division Code of Ethics;
- Internal Affairs Division Complaint Form;
- Legislative laws to which the Internal Affairs Division must adhere to per the Indiana Constitution; and
- City of Gary Code of Ethics.

Your records request is signed, simply, "Sumbry," and contains neither your full name, your offender number, your return address, nor any other contact information for the public agency to use in responding to the request. There is no indication before me of when you mailed that request. There is also no indication of whether the Department received your request, or, if it did, when the request was received.

On November 5, 2003, you prepared and signed a complaint alleging that the Department violated the APRA by failing to respond to your request within seven (7) days. That complaint was received by this office on November 13, 2003. The Department responds to your complaint first noting that it cannot determine, due to the unavailability of Sgt. Pawlak, whether the Department received your request and if it did whether Sgt. Pawlak previously submitted a timely response. The Department further responds to your complaint by submitting a letter and enclosures purporting to answer each of the items you requested.<sup>2</sup>

## 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 records request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to

---

<sup>2</sup> This office sent the Department a copy of your records request, your complaint, and our cover letter for those documents. The Department returned those three pages as part of its response. The Department's substantive response is in four pages, and includes a facsimile cover sheet, a one page letter, and a two page brochure.

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). When a public records request is denied, the requesting party may bring an action under the APRA (IC 5-14-3-9(d)), or may file a formal complaint with this office (IC 5-14-5-6). Although you signed your records request on October 22, 2003, there is no suggestion of when you mailed the request. If I assume for purposes of this opinion that you mailed the request on the same day you signed it, the Department would not be considered to have received it until three business days from the date of mailing, or, in this case, on October 27, 2003. Thus, assuming the Department received the request, its response was due to be submitted on November 3, 2003, seven days from receipt. IC 5-14-3-9(b).

There is little support for conclusive findings in this case. Your own paperwork does not demonstrate when or if you mailed the request to the Department. The Department stops short of denying that it received the request, but has no record of receipt or response and cannot confirm either event because the officer you directed the request to is currently on vacation and unavailable. I do note that upon receipt of a copy of the complaint from this office, the Department immediately responded with a letter and enclosure that went beyond its response and production obligation. Notably, the Department is not required to create a record in response to a request for public records where no such record exists. Yet, that is precisely what the Department did when it responded to items 3 and 4 of your request wherein you seek information on the duties of the Internal Affairs Division and the types of complaints the Internal Affairs Division investigates. The Department's response otherwise states that no records are responsive to your request (items 1, 2, 5, 6, and 9), or produces a document that is responsive to your request (items 5 and 7). With regard to item 8 of your request wherein you seek "[l]egislative laws that the Internal Affairs [Division] must adhered [sic] to per the Indiana Constitution," the Department appropriately responds that it is not qualified to provide that information. Indeed, that request seeks legal opinion from the Department, not public records. The Department is not required to do legal research for you.

#### CONCLUSION

For the reasons set forth above, I cannot find on this record that the Department violated the APRA by failing to respond to your records request within the time period allotted by statute. Although I note that the Department has responded to your request in response to your complaint, if further evidence is developed to demonstrate that the Department received your request and failed to respond to that request within seven days of receipt, I would find that the failure to timely respond violated the APRA.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Garnett F. Watson, Jr., Chief of Police, Gary Police Department