

October 8, 2003

Larriante J. Sumbry
DOC # 965137, C-433
Indiana Department of Correction
Indiana State Prison
P.O. Box 41
Michigan City, Indiana 46361-0041

Re: 03-FC-81; *Alleged Denial of Access to Public Records by the Gary Police Civil Service Commission*

Dear Mr. Sumbry,

This is in response to your formal complaint, which was received on September 8, 2003. You have alleged that the Gary Police Civil Service Commission (the "Commission") violated the Indiana Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Commission failed to respond to the request for public records that you sent by mail on August 27, 2003. Mr. Charles D. Brooks, Jr., attorney for the Gary Police Civil Service Commission responded by phone and facsimile to your complaint. A copy of his response is enclosed for your reference. It is my opinion that the Commission did not violate the APRA because the Commission did respond to your request within seven (7) days of receipt of your letter.

BACKGROUND

Your complaint states, in its entirety, "James Baker failed to respond to my request for public records within 7 days as required by law. See enclosure." The sole enclosure is a letter dated August 27, 2003, addressed to "Public Official." Your complaint is dated September 4, 2003. If the letter you enclosed with your complaint is in fact the same letter you sent to the Commission, a total of eight (8) days elapsed between the time you sent your request and the time you sent your complaint. In your letter, you requested the following:

- "Define the duties/responsibilities of the Police Civil Service Commission";
- "Police Service (Civil) Commission Annual Report";
- "Policy Civil Service Commission Code of Ethics";
- "Gary Local Ordinances";

- “Police Civil Service Commission Handbook & Practice and Internal procedures”; and
- “Jurisdiction of the Commissioners”.

In his response to this office, Mr. Brooks attached a copy of a letter addressed to you dated September 8, 2003. In that letter, Mr. Brooks responds to each of your requests one by one and attaches the records that exist and that he can identify from your request with reasonable particularity.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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." Ind. Code § 5-14-3-1.

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. For requests that are delivered by mail or facsimile, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b).

Here, the Commission is clearly a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2. The Commission responded to you through Mr. Brooks in a letter dated September 8, 2003. That response was only eight (8) days after you allegedly sent your request. The seven (7) day mandatory response period begins not when you send your request, but when the public agency receives it. It is reasonable to assume, in the absence of sending your request by certified mail, that the Commission received your request at least two (2) or three (3) days after you sent it. Therefore, the Commission responded within seven (7) days after receiving your request.

CONCLUSION

It is my opinion that the Commission did not violate the APRA because it responded to your mailed request within seven (7) days of receiving it.

Sincerely,

Sandra K. Bowman
Acting Public Access Counselor