

October 22, 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-89; *Alleged Denial of Access to Public Records by the Indiana Secretary of State*

Dear Mr. Sumbry,

This is in response to your formal complaint, which was received on September 29, 2003. You have alleged that the Indiana Secretary of State (the "Secretary") violated the Indiana Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Secretary failed to respond to the request for public records that you sent by mail on September 15, 2003. Ms. Heather C. Sewell, Deputy Secretary of State and Chief of Staff, responded by letter to your complaint. A copy of her response is enclosed for your reference. It is my opinion that the Secretary did violate the APRA because the Secretary did not respond to your request within seven (7) days of receipt of your letter. Although it does not change my opinion, it should be noted that the Secretary has subsequently complied with your request.

BACKGROUND

Your complaint states that you requested public records from the Secretary and that you did not receive a response within seven (7) days. Your complaint is dated September 24, 2003; your letter to the Secretary is dated September 15, 2003. A total of nine (9) days elapsed between the time you sent your request and the time you sent your complaint. In your letter, you requested the following:

- "Secretary of State Annual Report";
- "Define the duties/responsibilities of the Secretary of State";
- "Secretary of State Code of Ethics";
- "Secretary of State Handbook and Practice and Internal Procedures";
- "Packet on private and non-profit corporation organization"; and
- "Secretary of State complaint forms".

In her response to this office, Ms. Sewell states that she received your letter, but that you did not include any contact information, so she could not respond to the request or get in contact with you to obtain such information. After being served with your complaint, Ms. Sewell responded to your request by letter dated October 6, 2003. By telephone conversation, Ms. Sewell indicates that it is the Secretary's practice to discard envelopes when the Secretary receives correspondence.

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 Secretary is clearly a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2. You sent your complaint for failure to respond on the eighth day after you mailed your request. Again I remind you that the seven (7) day period begins to run on the date the agency receives your request, not on the date you send it. As you know, your complaints for failure to respond often cross paths in the mail with the agency's response to your requests. That possibility was not precluded in this situation. It may be best to calculate two (2) to three (3) days for your request to reach the public agency, the seven (7) day response period, and another two (2) to three (3) days for the agency's response to reach you through the mail before you file a formal complaint.

However, in this case, the Secretary did not respond. Although Ms. Sewell acknowledges receipt of your request, she does not indicate the date of receipt. It is reasonable to assume that if you mailed your request on September 15, 2003, the Secretary received your request before September 28, 2003, nearly two (2) weeks later). Therefore, seven (7) days elapsed after the Secretary received the request and there was no response. This is a violation of the APRA.

Ms. Sewell states that the Secretary did not respond prior to being served your complaint because you did not include your contact information with your request. It is true that you do not include your return address on your requests; rather, the only contact information you provide is on the envelopes. Envelopes are easily damaged in the course of mail delivery, and your return

address can be obscured through no fault of the public agency to which you direct your request. Here, however, the Secretary discarded the envelope without making note of your contact information. In the future you would be wise to include your return address in your letter. This would increase the likelihood of a response from the public agency, as it would limit the chances that your contact information would be obscured in the mail or discarded.

CONCLUSION

It is my opinion that the Secretary violated the APRA because the Secretary failed to respond to your mailed request within seven (7) days of receiving it. Although it does not change my opinion, it should be noted that the Secretary has now complied with your request. I also advise that you include your return address in your future requests, and not solely on the envelopes.

Sincerely,

Sandra K. Bowman
Acting Public Access Counselor

Cc: Heather C. Sewell