

October 29, 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-92; *Alleged Denial of Access to Public Records by the Legislative Services Agency*

Dear Mr. Sumbry,

This is in response to your formal complaint, which was received on October 3, 2003. You have alleged that the Legislative Services Agency ("LSA") violated the Indiana Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that LSA failed to respond to the request for public records that you sent by mail on September 15, 2003. On October 7, 2003, LSA provided me a copy of its response to you. A copy of that response is enclosed for your reference. I cannot determine whether LSA violated the APRA by failing to respond within seven (7) days because it is unclear when you submitted your public records request.

#### BACKGROUND

Your complaint states that you requested public records from LSA and that you did not receive a response within seven (7) days. According to your complaint, on September 22, 2003, you sent a public records request to Mr. Timothy Tyler of LSA. However, your sole enclosure is a letter addressed to Mr. Timothy Tyler of LSA dated September 29, 2003. In your letter, you requested the following:

- "House of Representatives & Senators (2003) 'Rules for the Government of the House' Booklet";
- "Senate Annual Report";
- "House Annual Report";
- "Duties & Responsibilities of Present of the Senate, President Pro-Tempore of the Senate, Senate Majority Leader, Senate Minority Whip, Secretary for the Majority, Senate Minority Leader, Senate Majority Whip, Secretary for the

Minority Senate Legislative Counsel, of the House, Democratic Congressional Campaign Committee, Congressional Representative Office of Legislative Counsel and their identity”;

- “Congressional Records”;
- “Public Law 133”;
- “Legislative Ethics Committee”;
- “Civil Right Protection in the U.S.”;
- “Brief Summaries of Constitutional Amendments”;
- “Federal Laws”;
- “Executive Orders”;
- “Public Law on Indiana Code 35-34-1-8(f)”;
- and House of Representatives/Senate Standard Complaint form”.

When you did not receive a response to your request as of September 30, 2003, you filed your complaint with this office.

In response to your complaint to this office, LSA provided a copy of their response to your request. In their response to you, LSA advise that some of the records could be provided upon payment of the fee. As for other records, LSA advised that it may not have the records you requested because it appears as though you are referring to federal records.

#### 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).

LSA is a public agency for the purposes of the APRA. Based upon the documents you provided it is unclear when you submitted your request to LSA. If you submitted your request on September 22, 2003, as you indicate in your complaint, then the response on October 7, 2003, was beyond seven days, and would have been a violation. On the other hand, if you sent your request on September 29, 2003, as your enclosed letter indicates, then the response on October 7, 2003, was within seven days, and would not have been a violation.

CONCLUSION

Based upon the information you submitted it is unclear when you submitted your request. Consequently, it is impossible to determine if LSA failed to respond within seven days of receiving your request in violation of the APRA.

Sincerely,

Sandra K. Bowman  
Acting Public Access Counselor

Cc: LSA