

December 30, 2003

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

*Re: Formal Complaints 03-FC-134, 03-FC-135 and 03-FC-136  
Alleged Denial of Access to Public Records by the Disciplinary Commission of the  
Supreme Court, Lake County Judicial Nominating Commission, and the Lake County  
Superior Court*

Dear Mr. Sumbry:

This is in response to your formal complaints alleging that the Disciplinary Commission of the Supreme Court (03-FC-134), the Lake County Judicial Nominating Commission (03-FC-135), and the Lake County Superior Court (03-FC-136) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), by failing to timely respond to your requests for records within the time period allotted by statute. Because each complaint raises the sole issue of the public agencies' failure to timely respond, these matters are consolidated for opinion. Each entity has responded to your complaints, and copies of those responses are enclosed for your reference. For the reasons set forth below, I find that these entities did not violate the APRA as alleged in your complaints.

## BACKGROUND

### *Formal Complaint 03-FC-134*

On November 20, 2003, you signed a letter addressed to the Disciplinary Commission of the Supreme Court (Disciplinary Commission) requesting access to records you assert are maintained by that entity. Your request seeks the following records and/or information:

- Disciplinary Commission Annual Report;
- Disciplinary Commission Professional Services Contracts;
- Disciplinary Commission Duties and Responsibilities;
- All Complaints Filed Against Indiana Attorneys;
- Complaints the Disciplinary Commission Investigates;

- Names of all Staff Members Employed by the Disciplinary Commission;
- Disciplinary Commission Handbook of Practice and Internal Procedures;
- Disciplinary Commission Code of Ethics;
- Civil/Criminal Complaint Form; and
- Legislative Laws Applicable to the Disciplinary Commission.

On December 1, 2003, you signed a complaint subsequently filed with this office challenging the Disciplinary Commission's failure to respond to your request. This office forwarded your complaint to the Disciplinary Commission for response on December 3, 2003. The Disciplinary Commission responds that it received your request on November 24, 2003. A response intended for immediate reply was prepared, but according to the Disciplinary Commission that response was inadvertently not sent until December 3, 2003, when the Disciplinary Commission received notice from this office that you filed a complaint challenging its failure to respond. The Disciplinary Commission thereafter tendered to you and to this office its response to your request and its response to your complaint.<sup>1</sup> In response, the Disciplinary Commission produced its annual report, which it contends is responsive to various of your requests. The Disciplinary Commission further responds that it does not maintain documents responsive to other items in your document request, and as to your request seeking information on laws applicable to the Disciplinary Commission refers you to your prison law library.

*Formal Complaint 03-FC-135*

On November 17, 2003, you signed a letter addressed to the Karen Coulis as a member of the Lake County Judicial Nominating Commission (Nominating Commission) requesting access to records you assert are maintained by that entity. Specifically, your request seeks the following records and/or information:

- Nominating Commission Annual Report;
- Nominating Commission Duties and Responsibilities;
- Nominating Commission Code of Ethics;
- Nominating Commission Professional Services Contracts;
- Nominating Commission Handbook of Practice and Internal Procedures;
- Tort Liability Act; and
- Present and Past Disciplinary Complaints.

On December 1, 2003, you signed a complaint subsequently filed with this office challenging Ms. Coulis's failure to respond to your request. This office forwarded your complaint to Ms. Coulis for response on December 3, 2003. Ms. Coulis responds that she ceased being a member of the Nominating Commission on October 1, 2003, prior to the date you submitted your request to her attention. Ms. Coulis further responds that the Nominating Commission does not maintain an office at the address you mailed your request to, and that she did not receive the request until December 1, 2003, when she reported to the public defender's

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<sup>1</sup> The response to the complaint shows a date of August 28, 2003. This date is clearly a scrivener's error inasmuch as the body of the letter references your November request and the December complaint.

office for her part-time office hours with the public defender. As to the substance of your request, Ms. Coulis states that neither she nor the Nominating Commission maintain or maintained any documents responsive to your request.

*Formal Complaint 03-FC-136*

On November 17, 2003, you signed a letter addressed to the Clerk of the Lake County Superior Court (Lake County Court) requesting access to records you assert are maintained by that entity. Specifically, your request seeks documents showing the appointment and term of an unidentified judicial officer, the oath of office, and the identity of the person who administered the oath. On December 1, 2003, you signed a complaint subsequently filed with this office challenging the Lake County Court's failure to respond to your request. This office forwarded your complaint to the Lake County Court for response on December 3, 2003. The Lake County Court responds that it did not receive your records request. The Lake County Court further responds in substance stating that the oath is administered by the Clerk or Deputy Clerk of the Court, and stating that your request is otherwise not sufficiently particularized to provide responsive documents in that the appointment, terms, and oaths for judicial officers are kept by the date and court of appointment. The response further anticipates that your request seeks information for a specific judicial officer that was the subject of a prior request you made, and states that any responsive documents related to that appointment are stored off-site. The Lake County Court further responds to suggest that if you confirm the identity of the judicial officer that is the subject of your request or otherwise particularize your request, it will provide the responsive records upon receipt of the applicable copy fee.

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 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). Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. *Cf.* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C).

I decline to find that the Disciplinary Commission violated the APRA under the facts as alleged in your complaint. The Disciplinary Commission acknowledges receipt of your records request on November 24, 2003. Accordingly, that entity had seven days from the date of receipt, or, until December 1, 2003, to prepare and submit a response. Your complaint alleging that the Disciplinary Commission violated the APRA by failing to timely respond is signed and dated on

December 1, 2003, *within the time the Disciplinary Commission's response was due.*

Accordingly, your complaint was premature, and the Disciplinary Commission cannot be said to be in violation of the APRA at that time and based on the allegations of that complaint. I note that the Disciplinary Commission has since responded to your request with production of documents and information responsive to each item in your request. No subsequent complaint is asserted regarding the timeliness or substance of that response.<sup>2</sup>

I decline to find that the Nominating Commission violated the APRA under the facts as alleged in your complaint. I note that you addressed your request to a specific person as opposed to the public agency. While the APRA does not place on the requesting party the burden to identify and direct a public records request to a specific person within the public agency (*see* IC 5-14-3-3(a); IC 5-14-3-9(b)), by doing so here you facilitated any delay in the public agency's receipt of and timely response to your request. Specifically, although Ms. Coulis previously served as Secretary of the Nominating Commission, she did not serve in that or any other capacity on the Nominating Commission at the time you submitted your request. No response date was triggered because the public agency cannot be said to have received the request.<sup>3</sup>

I decline to find that the Lake County Court violated the APRA under the facts as alleged in your complaint. The Lake County Court expressly states that it did not receive your request until December 3, 2003, when it received the request as an enclosure with the complaint this office forwarded to that office. Upon receipt, the Lake County Court prepared a timely response that requests more particular information regarding the subject of your request and that indicates its intention to produce documents responsive to that request upon receipt of that clarification and payment of the copy fee.

#### CONCLUSION

For the reasons set forth above, I find the complaints without merit.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. Donald R. Lundberg  
Ms. Karen M. Coulis  
Mr. Edward H. Feldman

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<sup>2</sup> While the Disciplinary Commission was not in violation of the APRA at the time you submitted your complaint, its response was ultimately submitted several days after the time for a response had elapsed.

<sup>3</sup> The Nominating Commission is created by statute, supported by the Board of County Commissioners, and meets at the county judicial center or in such other place as may be arranged by the Clerk of the Court. IC 33-5-29.5-28; IC 33-5-29.5-35.