

December 23, 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-142  
Alleged Denial of Access to Public Records by the State Ethics Commission*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the State Ethics Commission (Commission) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when it failed to respond to your December 5, 2003, request for records within the time period allotted by statute. The Commission has responded to your complaint by submitting a copy of the December 11, 2003, it sent to you in response to your records request. A copy of that letter is enclosed for your reference. I find that the Commission responded to your request in a timely manner, and thus did not violate the APRA.

#### BACKGROUND

On December 5, 2003, you signed a letter addressed to the Commission requesting access to records you assert are maintained by the Commission. Specifically, your request seeks the following records and/or information:

- State Ethics Commission Annual Report;
- State Ethics Commission Public Meetings;
- State Ethics Commission Handbook of Practice and Internal Procedures;
- State Ethics Commission Code of Ethics;
- Civil/Criminal Complaint Form;
- State Ethics Commission Duties and Responsibilities;
- Complaints the State Ethics Commission Investigates; and
- Present and Past Disciplinary Complaints.

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 or when the Commission received your request.

On December 15, 2003, you prepared and signed a complaint alleging that the Commission violated the APRA by failing to respond to your request within seven (7) days. That complaint was received by this office on December 18, 2003. The Commission responds to your complaint by providing this office with a copy of its written response to your records request. The response is dated December 11, 2003, less than seven days after your records request was submitted. The response purports to cover enclosures satisfying its production of documents that are responsive to your request.

#### 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).

In this matter, the public agency responded to your request in writing and within seven days of both submission and receipt of your request. The response was timely, and appears to have simply crossed in the mail with your complaint. Moreover, that timely response purports also to satisfy production of documents responsive to your request. Accordingly, I find that the Commission did not violate the APRA.

#### CONCLUSION

For the reasons set forth above, I find that the Commission responded to your records request within the time period allotted by statute. Accordingly, your complaint is without merit.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. Timothy J. McClure, Director, State Ethics Commission