

January 7, 2004

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-145
Alleged Denial of Access to Public Records by the Lake County Auditor*

Dear Mr. Sumbry:

This responds to your formal complaint alleging that the Lake County Auditor (Auditor) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), by failing to timely respond to your records request within the time required by statute. A copy of the Auditor's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Auditor did not violate the APRA as alleged in your complaint.

BACKGROUND

On December 11, 2003, you signed a letter addressed to the Auditor requesting access to records you assert are maintained by that entity. Specifically, your request seeks:

- Lake County Civil Judges Contracts/Malpractice Insurance;
- State of Indiana Tort Liability Act;
- Liability Self-Insurance Manual;
- Lake County Contract with David Brandewie re: specific cause numbers;
- Lake County Commissioners Contracts; and
- Lake County Contract with Kevin Relphorde re: specific cause numbers.

Your records request is signed, simply, "Larriante Sumbry," and contains neither your offender number, your return address, nor any other contact information for the public agency to use in responding to the request. On December 22, 2003, you signed a complaint subsequently filed with this office challenging the Auditor's failure to respond to your request. This office forwarded your complaint to the Auditor on December 29, 2003. The Auditor responds that your records request was never received by that office until it was received as an enclosure with our letter and a copy of your complaint for the Auditor's response. The Auditor further responds that

had that office received the request the Auditor would have requested clarification on the items listed to determine whether the Auditor has records that might be responsive to your intended request. The Auditor further responds by inviting a more particularized request and by requesting that you direct your further request to Judith Companik, the Executive Director of that office.

ANALYSIS

A public agency that receives a records request 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 responsive documents 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 Auditor violated the APRA. Your request is dated and signed December 11, 2003, but there is no indication of whether and when you mailed the request. The Auditor states that he did not receive your request, and there is no evidence to suggest otherwise. That said, the Auditor is now in possession of your request and, by virtue of your subsequent complaint and this opinion, now has the obligation to respond as appropriate under the statute. With regard to all of the items now requested or as further particularized by you, the Auditor must produce any responsive records in the Auditor's possession, and is entitled to payment of any copying fees in advance of production. IC 5-14-3-3.

The Auditor indicates that further response and production requires that you clarify your request. Certainly the Auditor is permitted to request that you identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). The Auditor does not state in what manner and with regard to which items your request is deficient. That said, I would agree that with the possible exception of your requests for contracts between Lake County and the two attorneys listed, the records request is not sufficiently specific to identify with reasonable particularity the documents requested. I would also note that your request for the "Tort Liability Act" seeks legal analysis and opinion, and in that regard is not a proper request for records. In my opinion, the Auditor is not under any obligation to provide you with legal counsel or other legal interpretation.¹

¹ If this is a request for a copy of the Tort Claims Against Governmental Entities and Public Employees Act, a copy of that statute, which may or may not be in the possession of the Auditor, is codified at Indiana Code 34-13-3, and is available to you for inspection through the prison law library.

CONCLUSION

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

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Judith L. Companik