

January 5, 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-147
Alleged Denial of Access to Public Records by the LaPorte County Auditor*

Dear Mr. Sumbry:

This responds to your formal complaint alleging that the LaPorte 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:

- LaPorte County Auditor Annual Report;
- LaPorte County Auditor Professional Service Contracts;
- LaPorte County Auditor Handbook of Practice and Internal Procedures;
- State of Indiana Tort Liability Act; and
- LaPorte County Auditor Public Meetings.

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. On December 29, 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 31, 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

although all records maintained by that office are “public,” he is unable to respond to your request because the request does not contain contact information for a response.¹

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 sufficient information to respond to your request. 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. To facilitate the Auditor’s further response, I note that the fourth item of your request seeks state tort liability laws. This request 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.² I further note that the fifth item seeks “Auditor Public Meetings.” This could be a request for any “Public Notice” of meetings as provided in Indiana Code 5-14-1.5-5, for copies of memoranda or minutes from all or any specific meetings attended by the Auditor, for the Auditor’s calendar, or any number of other items. I think this request insufficient to identify with particularity the specific records you are seeking.

¹ Of course, while your records request does not contain your contact information, your complaint form now in the possession of the Auditor specifically identifies you as the complainant and provides your address for any further contact.

² 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: Mr. Kenneth Layton