

August 26, 2003

Larriante J. Sumbry
#965137 A-257
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: 03-FC-62; *Alleged Denial of Access to Public Records by the Indiana House of Representatives*

Dear Mr. Sumbry:

This is in response to your formal complaint, which was received on July 28, 2003. You have alleged that Dr. Vernon Smith, State Representative State of Indiana House of Representatives ("House of Representatives"), has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that Representative Smith denied your public records request dated July 9, 2003 for access to a number of public records. Dr. Smith responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that Representative Smith did not violate the APRA by failing to provide you with the documents you requested because does not maintain the records you requested.

BACKGROUND

According to your complaint, in a letter dated July 9, 2003 you requested from Representative Smith access to public records concerning not only the House of Representatives and particular public laws, but also records concerning federal laws. When you had not received a response seven (7) days after you apparently mailed your request, you filed your formal complaint with this Office alleging that you had been denied access to these public records.

In his response, Dr. Smith stated that he no longer accepts letters from you because of threats, mandates, and disrespect included within your letters. Additionally, Dr. Smith advised, in a telephone conversation with me, that he is not the keeper of the

records for the House of Representatives and that your request should be sent to the Clerk of the House of Representatives and the Clerk of the Senate.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an 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. A public agency is defined as "any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state." Ind. Code § 5-14-3-2. Therefore, the House of Representatives is clearly a public agency for the purpose of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the House of Representatives during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

According to your complaint, you allegedly mailed your request to Dr. Smith on or about July 9, 2003. Dr. Smith, however, stated that he no longer accepts letters from you because of the content of some of your prior letters. Additionally, Dr. Smith advised me during a telephone conversation I had with him on August 14, 2003 that he does not have the records you requested because he is not the keeper of the records for the House of Representatives or the Senate. He further advised that you should request the records from the Clerk for each of those respective bodies. Therefore, even if Dr. Smith accepted your letter it is my opinion that if a public agency does not maintain the public records requested, it is not a denial of access under the APRA to fail to provide them upon request. For this reason, it is my opinion that you were not denied access to public records by Dr. Smith because the records you requested are not maintained by Dr. Smith.

On a final note, in the future if you are seeking public records regarding the General Assembly, such as annual reports, "Rules for the Government of the House, etc. you should submit your request to the respective Clerk's Office. Additionally, it should be noted that neither Dr. Smith nor any other public official has an obligation to retrieve public records from other agencies in order to satisfy a public records request.

CONCLUSION

It is my opinion that the Indiana House of Representatives, and in particular Dr. Vernon Smith did not violate the Access to Public Records Act with respect to your July 9, 2003 request because Dr. Smith does not maintain the public records you requested. The records you requested are likely maintained by the Clerk of the House of

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Representatives or the Clerk of the Senate, therefore, your request should be made to those respective Clerk's Offices.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Enc.

Cc: The Honorable Vernon Smith, Indiana House of Representatives