

September 16, 2003

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

Re: *Advisory Opinion 03-FC-77*; Alleged Denial of Access to Public Records by the
Indiana State Ombudsman Bureau

Dear Mr. Sumbry,

This is in response to your formal complaint, which was received on August 28, 2003. You have alleged that the Indiana State Ombudsman Bureau ("Bureau") has violated the Indiana Access to Public Records Act (the "APRA"). Specifically, you allege that Mr. F. Daniel Gettelfinger, Staff Attorney for the Indiana Department of Administration ("Department"), failed to respond to your request within seven (7) days of receiving your request. Ms. Shari Kinnaird responded in writing to your complaint. A copy of her response is enclosed for your reference.

For the reasons discussed below, it is my opinion that neither the Bureau nor Mr. Gettelfinger violated the APRA, as the Bureau is not yet operating and it is not Mr. Gettelfinger's responsibility to gather the documents you have requested.

BACKGROUND

You allege that on August 12, 2003, you mailed your request for information to Mr. Gettelfinger. Specifically you requested:

1. Indiana State Ombudsman Bureau annual report.
2. All information that the Bureau has concerning yourself including complaints and correspondence
3. Duties and responsibilities of the Bureau.
4. Handbook of Practice and internal procedures.
5. Public Law for the Bureau.

When you did not receive a response to your request you filed your complaint with this Office.

In her response to this Office Ms. Kinnaird responded to each of the items requested. Ms. Kinnaird advised that because the Ombudsman program is not a fully functioning office there are no annual reports that have been created. She further advised that the Department would be willing to provide copies of the documents you have sent to the Bureau. However, she advised that these documents would be nothing more than a trail of letters from members of the staff and yourself all of which you either sent or received copies of in the past. Additionally, she advised that the request for duties and responsibilities of the Bureau, the Handbook and internal procedures, and the public law for the Bureau are all covered by the copies of the legislation that Ms. Courtney Coe sent to you on August 7, 2003.

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. Consequently, any person has the right to inspect and copy the public records of the Bureau 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).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection. Currently the position of Ombudsman has not been filled; therefore, there is no one to respond to your requests. However, the Department is attempting to respond to all requests to the Ombudsman until the position is filled.

It should be noted that the Department has now addressed your public records request in its response to this Office. Ms. Kinnaird has advised that the position of Ombudsman has not been filled. Therefore, it has not yet generated any annual reports. It is my opinion, therefore, that you were not improperly denied access to the annual report since those reports do not exist.

According to Ms. Kinnaird the only documents in the possession of the Department are correspondence between yourself and the Department. Ms. Kinnaird advised that the Department is willing to send you copies of that correspondence if you so choose.

Finally, Ms. Kinnaird advised that the Department has already provided you with information related to the duties and responsibilities of the Bureau, the “so called handbook of practice and internal procedures,” and the public law for the Bureau. Ms. Kinnaird advised that that information is set forth in the legislation regarding the Bureau, which has already been provided to you. It is my opinion that the Department is not obligated to provide you with multiple copies of records. See Ind. Code § 5-14-3-8(e).

CONCLUSION

It is my opinion that it is a violation of the Indiana Access to Public Records Act for a public agency to fail to respond to public records within the statutorily required time period. Here, however, the Ombudsman has not been appointed. The Indiana Department of Administration has attempted to answer questions and requests to the Ombudsman until the position is filled. In response to your complaint the Department has advised that some of the records you requested do not exist and other documents are requests for additional copies of records that have already been provided to you. The Department is not obligated to provide you with multiple copies of public records. The Department has advised that it is willing to provide copies of all correspondence between you and the Department.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Cc: Ms. Shari Kinnaird, Director of Contracting
Indiana Department of Administration