

May 6, 2004

Mr. Liarrante Sumbry  
No. 965137  
Indiana State Prison  
P.O. Box 41  
Michigan City, Indiana 46361-0041

*Re: 04-FC-61; Alleged Violation of the Access to Public Records Act by the  
Lake County Health Department*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Lake County Health Department (Department) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it failed to timely respond to your request for records. A copy of the Department's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Department did not violate the APRA as alleged in your complaint.

#### BACKGROUND

According to your complaint, on March 16, 2004, you submitted a written request for records to the Department.<sup>1</sup> Your request sought a copy of your birth certificate along with any available medical records. On March 31, 2004, you prepared and submitted this complaint challenging the Department's failure to respond. In response, the Department denies that it received a copy of your request for records. Having now received your request with a copy of the complaint provided by this office, the Department states that it does not maintain any medical records, and that it needs additional information and advance payment before it can send you a copy of your birth certificate. Specifically, in addition to payment, you must submit your full name, date of birth, place of birth, and a copy of a picture identification. The Department states that the name on the copy of the request submitted with your complaint was not "legible." The Department also avers that it searched its records for the name as it understood it to be written and it found no responsive records.

#### 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

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<sup>1</sup> The request actually bears an original date of March 31, 2004, the date on your complaint, but you wrote the March 16, 2004, date over the top of the original date.

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 record 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 *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 Department violated the APRA under the facts as alleged in your complaint. The Department expressly states that it did not receive your request. While you provide a copy of a record request dated March 16, 2004, there is no evidence establishing that the request was posted by you on that date or that it was subsequently received by the Department. There is also a discrepancy in the date of the request. *See* Note 1. Accordingly, I decline to find the Department in violation of the APRA for failing to timely respond to a request for records it alleges it never received.

The Department's response to your complaint further asserts that it does not maintain medical records and that it needs payment and additional information before it can respond to your request in substance. The Department is entitled to require that your records request be reasonably particular (IC 5-14-3-3(a)(1)), and that you pay for the record requested in advance (IC 5-14-3-8(e)). You will need to resubmit your request with an accurate and clearly legible spelling of your name, date of birth, place of birth, and a copy of a picture identification. Upon receipt of payment and these items, the Department will search for a record that is responsive, and if satisfied that you meet the statutory criteria for disclosure of a birth certificate, will provide you with that record. Please note that the Department did a preliminary search on the name as understood from the request submitted with your complaint and did not find any responsive record.

#### CONCLUSION

For the reasons set forth above, I find that the Department did not violate the APRA for the reasons alleged in your complaint.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. Nicholas Doffin, R.E.H.S., Administrator