

May 6, 2004

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

*Re: 04-FC-62; Alleged Violation of the Access to Public Records Act by the
Indiana State Prison*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Indiana State Prison (Prison) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied your request for records. A copy of the Prison's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Prison 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 Prison. Your request sought a copy of your birth certificate. The Prison responded in writing on the following day stating that it does not maintain a copy of your birth certificate and recommending to you that you or your family contact the county health department for the county where you were born and request a copy of the record if maintained by that agency.¹ The Prison also advised you that if you obtain a copy of your birth certificate from another agency, you will not be permitted to possess it while you are incarcerated within the Indiana Department of Correction. You renewed your request on March 18, 2004, alleging that the birth certificate "should be in [your] packet." The Prison responded on the same day again denying that it has the record and advising you that you can review your packet per institutional policy. This complaint followed.

¹ I note that you also made a request for this record to the Lake County Health Department, and that agency advised you that it would comply with the request if it has a responsive record and if you establish your right to the record under laws governing access to birth certificate information. That agency further requested that you provide payment in advance and supply the agency with specific, legible, information supporting your request. *See 04-FC-61, Alleged Violation of the Access to Public Records Act by the Lake County Health Department, Advisory Opinion filed May 6, 2004.*

ANALYSIS

Indiana Code 5-14-3-3 provides that a person or entity may request and obtain access to a public record of a public agency subject to any applicable exemptions to production. A public record is a record that is created, received, maintained, or retained by a public agency. IC 5-14-3-2. A public agency is not required to create or otherwise obtain a record that satisfies your request.

Here, the Prison responded to your request in a timely manner and advised you that it did not maintain a copy of your birth certificate as a record of the Prison. The Prison maintains that position in response to your complaint, and you have not provided any evidence to the contrary. Neither does the law require the Prison to maintain this record as a record of that agency. The Prison's failure to provide you with a copy of a record that it does not and is not required to maintain is not a denial of a public record under the APRA. Your complaint is meritless.

CONCLUSION

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

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Jeffrey Worthington
Ms. Pam Pattison