

May 7, 2004

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

*Re: 04-FC-63; Alleged Violation of the Access to Public Records Act by the
Lake County Recorder*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Lake County Recorder (Recorder) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when that office failed to timely respond to your request for records. The Recorder's response to your complaint is attached for your reference. For the reasons set forth below, I find that the Recorder's failure to timely respond to your request for records violates the APRA. I further find that the Recorder did not otherwise violate the APRA where that office has since responded to the request and advised you that it has no documents that are responsive to your request.

BACKGROUND

According to your complaint, on March 1, 2004, you submitted a written request for records to the Recorder. While you do not provide this office with a copy of the request, you assert that it sought a "Uniform Commercial Code Financing Statement, Handbook of Practice and Internal Procedure, [and] Lake County Recorder Annual Report. On March 30, 2004, you prepared and submitted this complaint challenging the Recorder's failure to respond to your request. In response to the complaint, the Recorder acknowledges receipt of the request and that the office failed to timely respond. The Recorder further states that it has since responded to the request and advised you that it does not have any documents that are responsive.

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 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).

The Recorder acknowledges that it received your request and did not timely respond because the request was inadvertently misplaced. The Recorder's failure to respond to your request violates the APRA. The Recorder has since responded to the request and advised you that it does not have any of the records that you seek. While that response does not remedy the violation referenced above, I find that the response precludes any finding of a continuing violation.

CONCLUSION

For the reasons set forth above, I find that the Recorder's failure to timely respond to your request for records violates the APRA. I further find that the Recorder has not otherwise violated the statute.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Karen Freeman-Wilson