

May 12, 2004

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

*Re: 04-FC-66; Alleged Violation of the Access to Public Records Act by the
East Chicago Human Rights Commission*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the East Chicago Human Rights Commission (Commission) 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. A copy of the Commission's response to your complaint is enclosed for your reference.

BACKGROUND

According to your complaint, on March 26, 2004, you submitted a written request for records to the Commission.¹ Your request sought an annual report and various other records you assert are maintained by that agency. On April 8, 2004, you prepared and submitted this complaint challenging the Commission's failure to respond to your request. The Commission responds answering that it received your request, but it does not state when the request was received by that office. The Commission avers that it responded to your records request on March 22, 2004. The Commission does not state how that contact was made, but because you are incarcerated it is assumed you were contacted in writing. The Commission does not provide a copy of its March 22, 2004, response to your request. The Commission further answers that it will provide you with copies of ordinances and annual reports upon receipt of the prescribed copy fee, and that it does not otherwise have records that are responsive to your request.

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

¹ The copy of the request submitted with your complaint actually bears two dates. It appears to have been originally dated March 16, 2004. It further appears that you wrote March 26, 2004, over the top of the original date.

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).

As a threshold matter, there is an apparent discrepancy in the facts. Your request has two dates. One is March 16, 2004, and the other is March 26, 2004. The Commission agrees that it received your request (although it does not say when), and that it responded on March 22, 2004 (although it does not say how). If the request was submitted on March 16, 2004, and presuming receipt on March 19, 2004, the Commission's response on March 22, 2004, would be timely. If the response was in writing, the Commission would not be in violation of the APRA. If the response was not submitted as alleged, or if it was not in writing as required by the statute, the Commission would be in violation of the APRA. If you submitted the request or a new request on March 26, 2004, the Commission's failure to respond in writing within seven days of receipt of that request would violate the statute. I do not resolve this contested fact in this advisory opinion, but offer the foregoing comments in support of any further action you may want to take to enforce your rights under the APRA.

That said, I further note that the Commission's response to the complaint, now served on you in this matter, fully responds to your record request and precludes a finding of any continuing violation of the APRA.

CONCLUSION

For the reasons set forth above, I decline to find the Commission in violation of the APRA based on the facts as alleged and supported in your complaint. Additional facts developed in any civil action you might bring against the Commission may warrant a different conclusion.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Mark Sanders
Mr. Corinth Bishop