

January 21, 2005

Mr. Randy Bennett  
47 S. Franklin Road  
Indianapolis, IN 46219

*Re: Formal Complaint 05-FC-16; Alleged Violation of the Access to Public Records Act by the Indiana Secretary of State*

Dear Mr. Bennett:

This is in response to your formal complaint alleging that the Indiana Secretary of State (“Agency”) violated the Access to Public Records Act (“APRA”) by failing to respond timely to your record request. I find that the Secretary of State did not violate APRA.

#### BACKGROUND

You hand-delivered your written request for documents to the Secretary of State’s office on January 7, 2005. You were told that the only person who could grant your request was not present, so the agency could not respond immediately. You filed your formal complaint, which I received on January 14, 2005. You allege a failure to respond timely to your request because although the agency’s response letter was dated January 7, the envelope in which it was sent was postmarked January 10, 2005. You allege that you did not receive the response letter until January 12, 2005, making the response tardy. You also stated that you need the records you requested to present in a pending court proceeding, and consequently, your request for priority status for your complaint is appropriate. Hence, this advisory opinion is being issued within seven days. 62 IAC 1.

I sent a copy of your complaint to the agency. Ms. Heather Willis’s written response is enclosed for your reference. She states that, as evidenced by the copy of your request, the front desk clerk logged in your request at 3:05 p.m. on January 7, 2005, which was a Friday. She further stated that the letter in response to your request, which indicated that the agency was

identifying responsive documents as soon as practicable, was prepared on January 7 and placed in the mail outgoing mail bin by the end of the work day.

## ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless a record is excepted from disclosure under section 4 of the APRA. Ind.Code 5-14-3-3(a). As you are aware, an agency is required to respond to a request for records within certain timeframes, depending upon the way in which the agency receives the record request. For requests that are delivered in person, the agency must respond within 24 business hours. IC 5-14-3-9(a). If the APRA required that an agency respond to a request within 24 clock hours, the agency would have been required to respond to your request by 3:05 p.m. on a Saturday, when it is not open for business. Alternatively, the agency would have had to respond within about one and one-half hours, another result that could not have been intended by the legislature. Accordingly, this office has determined that 24 business hours allows the agency to consider a request for records and respond in an expeditious way.

Notwithstanding the above, the agency states that it prepared the responsive letter on the same day that you hand-delivered your record request, and placed it in outgoing mail that same evening. The postmarked date on the envelope of January 10, a Monday, evidences the likelihood that the final mail pickup had occurred before the agency mailed your letter. Nevertheless, even considering January 10 as the date that the agency mailed the letter, it would still have been timely under APRA, since January 10 was within 24 business hours. The date that you received the response is not relevant to when the agency has responded, although I note that you may have received the letter within 24 business hours.

In my opinion, the Secretary of State timely responded to your request for records, and accordingly, your complaint is without merit. I also note that the records you requested were sent to you by mail on January 14.

## CONCLUSION

For the foregoing reasons, I find that the Secretary of State did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Heather C. Willis