

September 16, 2003

Mr. Larriante Sumbry, 965137
Location A-257
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 03-FC-78*; Alleged Denial of Access to Public Records by
the Indiana Judicial Nominating Commission

Dear Mr. Sumbry:

This is in response to your formal complaint, which was received on August 25, 2003. You have alleged that the Indiana Judicial Nominating Commission ("Commission") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Commission denied you access to public records by failing to respond to your public records request. Ms. Meg Babcock responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Department did fail to respond to your request for public records in violation of the APRA.

BACKGROUND

According to your complaint, in a letter dated August 13, 2003 you requested access to records of the Commission. Specifically, you requested copies of

1. Complete Judicial Commission Annual Report
2. Judicial Commission Handbook of Practice and internal procedures
3. Any and all complaints you filed with the Commission
4. Indiana Judicial Conference annual report
5. Indiana Supreme Court Annual Report
6. Civil Legal Aid Fund Annual Report
7. Judicial Commission's Administrative/Investigative Rules
8. Indiana Supreme Court Clerk's Office Annual Report

When you did not receive a response to your request you filed your complaint with this Office.

In her response to this Office Ms. Babcock advised that your public records request was attached to another letter from you in which you asked Ms. Babcock to notify the Governor regarding some matter. Ms. Babcock admitted that she overlooked the second page, which was your public records request. Ms. Babcock has now responded to your public records request.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Commission is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Commission during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1.

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d). According to the information provided, the Commission did receive your request, but failed to respond within the seven (7) day period after receiving that request in violation of the APRA.

While it does not alter my opinion concerning the timeliness of the Commissioner's response to your request, Ms. Babcock has now responded to your request. However, you were not denied access to the Indiana Judicial Conference Annual Report, the Indiana Supreme Court Annual Report, and the Civil Legal Aid Fund Annual Report because the Commission does not maintain those records. Additionally, Ms. Babcock has advised that she will send you a copy of the Commission's Annual Report for fiscal year 2002-2003. Additionally, she advised that she would send a copy of the Supreme Court Admission and Discipline Rule 25, which responds to your request for the Commission's Handbook of Practice and Internal Procedures and the Administrative/Investigative Rules. Finally, Ms. Babcock advised that she will gather all the correspondence the Commission has received from you and will provide you with copies of those records upon receipt of the copying fee.

CONCLUSION

It is my opinion that the Indiana Judicial Nominating Commission failed to respond to your request within the seven (7) days as required under the Indiana Access to Public Records Act. While it does not alter my opinion it should be noted that the Commission has now responded to your public records request.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Cc: Ms. Meg Babcock, Counsel
Indiana Judicial Nominating Commission