

September 5, 2000

Mr. Richard E. Volbrecht, Jr.
9221 Parkway Drive
Highland, IN 46322

Re: Advisory Opinion 00-FC-28¹ *Denial of Access to Public Records by the Highland Police Department.*

Dear Mr. Volbrecht:

This is in response to your formal complaints, which were received on August 15, and 17, 2000. You have also supplemented these complaints with information communicated to me via e-mail messages. You have alleged that the Highland Police Department ("Department,") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3, by failing to respond to your requests within the time period provided in the statute. Mr. Rhett Tauber, Attorney for the Town of Highland, responded in writing to your complaints in a letter dated August 24, 2000. A copy of his response is enclosed for your reference.

It is my opinion that the Department denied you access to public records under the APRA when it failed to respond to all but one of your requests within the time period required under Indiana Code section 5-14-3-9 and these denials are actionable under Indiana Code section 5-14-3-9(d).

BACKGROUND

According to your complaint, you hand-delivered your first public records requests to the Department, specifically, Officer George Georgeff, through the Town Clerk-Treasurer's Office, on August 4, 2000. In that request, you asked for copies of any and all grant requests which in any way fund the "Officer Friendly" programs, including "DARE," "GREAT," and "Cops and Schools" programs, and in particular, any costs, expenses, salary, and stipends. On August 8, 2000, Lt. Ken Balon of the Department told you that "Officer Friendly," George Georgeff would return to the office from vacation on August 9th or 10th, and purportedly would be then be able to address your request. You then hand-delivered a second written request to the Department on August 11, 2000 for copies of weekly sheets that list the miles driven, gallons (of gasoline) used, and maintenance expenses for the vehicle used by "Officer Friendly."

Lt. Balon telephoned you on August 15, 2000 to tell you that you could pick up a copy of the grant application for "Cops and Schools." At that time, you asked him when Officer Georgeff would be

back in office and you were told that he may return from vacation August 21st. On the date of your phone conversation with Lieutenant Balon, you hand-delivered two additional requests, one to Acting Chief Gard and the other to Lt. Balon. You requested the following from Chief Gard, which are essentially the same documents you requested from Officer Georgeff:

1. The grant applications for "GREAT" and "DARE"; and
2. the most recent annual income and expense sheets for "GREAT" and "DARE," including grant money or income, program expenses, salaries for police officers and vehicle expenses, and the weekly sheets which list the miles driven, gallons (of gasoline) used, maintenance expenses for the vehicle used by Officer Friendly, since the vehicle was procured.

You requested the following from Lt. Balon:

1. The Police Department vacation schedule sheets showing all police vacations from January 1, 2000 through the sheet that shows Officer Georgeff's present vacation ending on or about August 20, 2000; and
2. the Police Department vacation schedule which lists Officer Georgeff's present vacation (that he was on at the time of your request) that would show when his vacation started and when it would end.

On August 16, 2000, Lt. Balon telephoned you and provided you with a copy of the Police Department's vacation schedule for January 1, 2000 through July 31, 2000. There was no mention of your additional request for specific information about Officer Georgeff's vacation. On August 17, 2000, Lt. Balon informed you by telephone that Chief Gard was on vacation. Since you had not received satisfactory responses to your August 15th public records requests, you filed two additional complaints against the Department alleging that they had denied you access under the APRA.

In response to your formal complaints, Mr. Tauber first informed me via facsimile dated August 18, 2000 that you had picked up the documents requested from the Town of Highland that day. I asked Mr. Tauber to provide a more detailed response to your complaints and he did that in a letter dated August 24, 2000.

In his August 24th correspondence, Mr. Tauber confirmed that Officer Georgeff did receive your August 4th request on the Monday following, August 7th, but a response from Lt. Balon to this request was not provided until the next day, August 8th because Officer Georgeff was preparing to take his vacation. Officer Georgeff returned from his vacation on August 17th, which may explain why he did not personally respond to your second public records request of August 11th.

With respect to your August 15th request for copies of documents concerning vacation time, a letter² from Lt. Balon was attached to Mr. Tauber's response indicating that on August 24th, you were provided with a copy of Officer Georgeff's time cards that document his time up until August 19, 2000. Lt. Balon further provided responses to some of your requests for grant information on August 4th and August 15th, which were addressed to Officer Georgeff and to Chief Gard, respectively. No additional

information was provided for the failure of the Department to respond to your August 15th request to Chief Gard.

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 Department 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 Department 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).

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. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

When a person appears in a public agency's office and hand-delivers a written request, the public agency has twenty-four (24) hours from the receipt of that request to respond; the failure to do so constitutes a denial under the APRA. Ind. Code §5-14-3-9(a). 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).

Since public agencies must make public records available to persons during regular business hours, it is my position that the Department should have responded to your requests within twenty-four (24) business hours of your request. See, Ind. Code §5-14-3-3(a). For example, if you delivered a request on a Friday, you should receive a response on or before the next business day, the following Monday.

You delivered your first request on Friday, August 4th, so a response should have been provided on or before Monday, August 7th. You did not receive any response until August 8th. As to your second request on Friday, August 11th, you should have received a response no later than Monday, August 14th. From my reading of all of the correspondence, there seems to have been no response as to this request. As to the third and fourth requests made on August 15th, a response should have been made on or before August 16, 2000. You did not receive any response with respect to your requests to Chief Gard, presumably because he was on vacation. The only instance in which a response was made in a timely manner was with respect to your August 15th request to Lt. Balon. You did receive a response as to the department-wide vacation schedule on August 16th, which was appropriate under the APRA, however, Lt. Balon failed to respond as to your specific request for information on Officer Georgeff's

vacation time.

It is my opinion that the Department's failure to respond in a timely manner to most of your hand-delivered requests did violate the APRA. These denials are actionable in the circuit or superior court under Indiana Code section 5-14-3-9. The fact that a public official or employee is on vacation is not a sufficient reason for failure to respond in a timely manner. There is no dispute that the Department received your requests³ and that in most cases, either the individual addressee or someone else from the Department was aware that it had been received. The time periods for response are clear under the APRA, and for this reason, every public agency should have a method of ensuring that a response is made in a timely manner.

CONCLUSION

It is my opinion that the Highland Police Department denied you access to public records under the Access to Public Records Act when it failed to respond to all but one of your requests within the time period required under Indiana Code section 5-14-3-9. These denials are actionable in circuit or superior court under Indiana Code section 5-14-3-9(d).

Sincerely, Anne Mullin O'Connor

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Anne Mullin O'Connor

Enclosures

cc: Mr. Rhett Tauber, Attorney
Town of Highland

¹ You filed one complaint on August 15, 2000. Two additional complaints on the same matter were filed on August 17, 2000. Due to the similarity of your complaints, they are all three being addressed in this one opinion.

² You have apparently also made an additional request to the Department concerning the "Cops and Schools" program since the filing of your complaints. Attached to Mr. Tauber's response is another letter from Lt. Balon addressing your August 22, 2000 request.

³ Your requests were handed to Town representatives and on the Town's own form for such requests. If

a request had been delivered in a sealed envelope and addressed to a particular person, it may not have been as clear that the Department knew that these were public records requests.
