

June 2, 2003

Mark J. Pizur
TABBERT HAHN EARNEST & WEDDLE LLP
One Indiana Square, Suite 1900
Indianapolis, IN 46204

Re: *Advisory Opinion 03-FC-42: Alleged Denial of Access to Public Records by the Ohio County Auditor and Board of County Commissioners.*

Dear Mr. Pizur:

This is in response to your formal complaint, which was received on May 30, 2003. ¹ You have alleged that the Ohio County Auditor and Board of Commissioners ("Auditor" and "Commissioners") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a public records request to the Auditor and Commissioners, which was dated May 2nd, but that you did not receive a response to your request. Deborah Thomason, Auditor, responded in writing to your complaint and a copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Auditor and Commissioners' failure to respond to your written request within seven (7) days after it was received was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you mailed a public records request to the Auditor and Commissioners on May 2, 2003. The information requested pertains to your client, Roy A. Miller & Son, Inc.'s contention that Ohio County violated state statutes in the award of a public works project. In the interim, you filed on behalf of your client a complaint for a preliminary injunction, permanent injunction and declaratory judgment against the Commissioners and asked for an expedited hearing on this by the court. Since you had received no response from the Auditor or the Commissioners as of May 30th, you then filed your formal complaint with this Office.

In response to your complaint, Auditor Thomason stated that she was aware of the APRA but not familiar with the requirement that a public agency respond to a public records request within seven (7) days of receipt of the request. She stated that it is not her intention to deny anyone access to public records. Auditor Thomason further indicated that she sent you a letter directly advising you that you will receive the requested copies no later than June 13th. Because she shares a photocopier with five (5)

other county agencies, she is unable to use the copier for extended periods of time. The Commissioners confirmed Auditor Thomason's response by letter as well; a copy of which is also enclosed.

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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Auditor's Office and the Commissioners are clearly public agencies 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 Auditor and Commissioners 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. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request 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 the county 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 your complaint, you mailed your request to the Auditor and Commissioners and did not receive a response to your request within seven (7) days after the letter would have been received. It is my opinion that under the APRA, this failure to respond to your request constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). While this does not alter my opinion in this matter, it is important to note that the Auditor and Commissioners will provide you with any documents that are available and responsive to your request.

CONCLUSION

It is my opinion that the Ohio County Auditor and Board of Commissioners' failure to respond to your written request for access to public records within seven (7) days after it was received was a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: The Honorable Deborah Thomason
Ohio County Auditor and for the Board of Commissioners

[1](#) You requested an expedited Opinion under 62 IAC 1-1-3 and it appeared that your complaint qualified for expedited consideration. This Opinion, as a result, is being issued within seven (7) days of its receipt.