

August 25, 2000

Mr. David P. Allen
Attorney at Law
5231 Hohman Avenue, Suite 703
Hammond, IN 46320

Re: Advisory Opinion 00-FC-22 *Denial of Access to Public Records by the Lake County Sheriff's Department.*

Dear Mr. Allen:

This is in response to your formal complaint, which was received on August 7, 2000. You have alleged that the Lake County Sheriff's Department/Lake County Jail ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3, by failing to respond to your public records request of July 19, 2000. Mr. John Bushemi, Attorney for the Department, responded to your complaint in a letter dated August 23, 2000. A copy of his response is enclosed for your reference.

For the reasons stated below, it is my opinion that the Department did not make a timely response under the APRA when it failed to respond within seven (7) days of the receipt of your July 19th request for access to public records. While there was no duty to produce any disclosable public records in that same seven (7) day period, the Department was obligated to communicate to you the status of your request and failed to do so and therefore, the denial is actionable under Indiana Code section 5-14-3-9.

BACKGROUND

According to your complaint, you sent a public records request dated July 19, 2000, to the Department requesting access to various records related to the detention of your client on June 17 and 18 of this year. A return receipt from the Post Office indicated that your request was received by the Department on July 20, 2000. As of the writing of your formal complaint on August 2, 2000, you had received no response from the Department.

In his response to your complaint, Mr. Bushemi admitted that the Department does not deny that they received your request, but states that a delay occurred in the transmittal of your request to him for review and response. He also noted that there was some delay due to the actual compilation of the records requested. But, in his August 23rd response to your formal complaint, Mr. Bushemi also addressed the production of the records you requested.

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 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).

Under the APRA, "if a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request." Ind. Code §5-14-3-9(b). It is the responsibility of the public agency to respond to requests for public records within this time period. The APRA does not set any time periods for producing public records, merely for responding to the request.

It is clear that the Department was required to respond to your written request within seven (7) days after its receipt and that this was not done. It was only after you filed a formal complaint with this Office that a response was made to your request, and ultimately, the requested records were produced.

From the facts presented, it is my opinion that the Department did not respond to your July 19, 2000 public records request within the time period required under Indiana Code section 5-14-3-9(b) and that this denial is actionable in court under the APRA. To the Department's credit, upon receipt of your formal complaint, a response was made in the form of the production of the public records you requested. This untimely response, however, does not remedy the violation of the APRA.

CONCLUSION

It is my opinion that the Lake County Sheriff's Department/Lake County Jail failed to respond to your July 19th public records request within the time period required under the Access to Public Records Act and the failure to do so constitutes a denial under the Act.

Sincerely,

Anne Mullin O'Connor

cc: John Bushemi, Attorney
Lake County Sheriff's Department
