

November 1, 2000

Mr. Michael J. Tessman
411 W. Goldsborough Street
Crown Point, Indiana 46307

Re: Advisory Opinion 00-FC-36 *Alleged Denial of Access to Public Records by the Indiana Department of Correction.*

Dear Mr. Tessman:

This is in response to your formal complaint, which was received on October 13, 2000. You have alleged that the Office of Affirmative Action for the Indiana Department of Correction ("Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3, by failing to respond to a public records request dated July 28, 2000. Mr. Edward Cohn, Commissioner of the Department, responded in writing to your complaint in a letter dated October 27, 2000. A copy of his response is enclosed for your reference. It is my opinion that the Department denied access to public records under the APRA when it failed to respond to your public records requests within seven (7) days of receipt as required under Indiana Code section 5-14-3-9 and this denial is actionable under Indiana Code section 5-14-3-9(d).

BACKGROUND

According to your complaint, July 28, 2000, you mailed a public records request to the Department requesting all investigative summaries, materials, and witness statements with regard to an affirmative action investigation. In your written request, you identified the approximate time period of the investigation and the parties involved, both those being investigated and the investigators. On October 13, 2000, your formal complaint was received in this Office indicating that the Department had failed to respond in any way to your July request.

In his response, Mr. Cohn admitted that the Department did not respond to your request in a timely manner. Since the filing of your complaint, you should have received two different communications¹ from Mr. Joel Lyttle, Staff Attorney for the Department, responding to your July request. Further, Mr. Cohn stated that the Department never intended to deny access to any of its public records.

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 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.

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. 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).

Under the facts presented, it is my opinion that the Department failed to respond to your written request of July 28, 2000 within seven (7) days after receipt, which constituted a denial under Indiana Code section 5-14-3-9(b). Since the filing of your formal complaint, the Department has provided a response to you but this does not alter my opinion with respect to the failure to respond in a timely manner under the APRA.

CONCLUSION

It is my opinion that the Indiana Department of Correction failed to respond within the time period required under Indiana Code section 5-14-3-9(b) with respect to your public records request of July 28, 2000, which constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Edward Cohn, Commissioner
Indiana Department of Correction

1 In his October 16th response, Mr. Lyttle cited Indiana Code section 5-14-3-4(b)(1), the exception for investigatory records of a law enforcement agency, as the basis for the denial. Since the Department is not a law enforcement agency, this exception is not applicable. In his second response dated October 24th, Mr. Lyttle corrected his prior reference to Indiana Code section 5-14-3-4(b)(6), the exception for deliberative materials created in the process of decision making by a public agency.
