

December 22, 2000

Mr. Joseph E. Zrnchik
9306 Saric Drive
Highland, IN 46322

Re: Advisory Opinion 00-FC-40 *Denial of Access to Public Records by the Lake County Sheriff's Department.*

Dear Mr. Zrnchik:

This is in response to your formal complaint, which was received on November 29, 2000. You have alleged that the Lake County Sheriff's Department ("Department") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you state that the Department failed to respond to your requests for access to a list of all property seized and obtained through civil proceedings, a request originally made in a letter dated October 9, 2000, and then renewed November 6, 2000. I sent copies of your complaint and the attachments to Sheriff John Buncich and Mr. John Bushemi, attorney for the Department, on the day it was received by this Office. As of the writing of this opinion, no response has been provided on behalf of the Department.¹

Based upon the facts as presented in your complaint, it is my opinion that the Department denied you access to public records under the APRA when it failed to respond to your request within seven (7) days after your request was received as required under Indiana Code section 5-14-3-9. This denial is actionable under Indiana Code section 5-14-3-9(d).

BACKGROUND

According to your complaint, you addressed a public records request to the Department on October 9, 2000. In that request, you asked for a number of things, including "3. (a)n item list of seized property which has been obtained through civil proceedings, to include items which are being stored which have not gone through civil proceedings but are considered abandoned." You did receive a response from the Department as to Item 3, but you did not receive a list of property seized and obtained through civil proceedings.² You then made a subsequent, more specific request on November 6, 2000 for this list. As of the filing of your complaint on November 29, 2000, you have received no response to this 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 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(b).

The Department has failed to respond to your specific, November 6th request for a list of property seized and obtained through civil proceedings. If the Department has the list requested, or if there is no such list, the Department should have communicated that to you within the time periods contemplated under the APRA. It is my opinion, therefore, that the Department failed to respond to your specific request for a list of property seized and obtained through civil proceedings within seven (7) days as is required under Indiana Code section 5-14-3-9(b). The failure to respond to that request constituted a denial under the APRA that is actionable in court under the APRA.

CONCLUSION

It is my opinion that the Lake County Sheriff's Department failed to respond within seven (7) days after receiving your November 6th public records request for a list of property seized and obtained through civil proceedings as was required under Indiana Code section 5-14-3-9(b). This denial is actionable in court under the Access to Public Records Act.

Sincerely,

Anne Mullin O'Connor

Enclosure

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

1 Under Indiana Code section 5-14-5-9, I must issue this advisory opinion within 30 days after receiving your complaint. It is the policy of this Office to consider the positions of all parties to a formal complaint, but despite my communication to the Department and its attorney, which included follow-up calls to the attorney, I have received no written response on behalf of the Department.

2 Although I have not received any response to this complaint from the Department, I was copied on the letter responding to your October 9th request. With respect to the item that is the subject of your formal complaint, Mr. Bushemi wrote, "enclosed please find a list of all abandoned property held in storage which will be auctioned on October 28, 2000."
