

September 24, 2001

Mr. Rodney Martin  
109 N. Nebraska  
Marion, IN 46952

Re: Advisory Opinion 01-FC-52; Alleged Denial of Access to Public Records by the Office of the Indiana Attorney General.

Dear Mr. Martin:

This is in response to your formal complaint, which was received on August 31, 2001. You have alleged that the Office of the Attorney General, Unclaimed Property Division ("Attorney General's Office") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3, by failing to respond to a public records requests dated August 7, 2001. Mr. Gregory Zoeller, Chief Counsel for Advisory, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Attorney General 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. This denial is actionable under Indiana Code section 5-14-3-9(d).

### BACKGROUND

According to your complaint, on August 7, 2001 you mailed a public records request to the Attorney General's Office requesting a copy of the 1999 escheatment report filed by the Northern Indiana Public Service Company with the Unclaimed Property Division. On August 20th, you sent a follow up letter by facsimile indicating that you had no response to your August 7th request and that you would like to obtain a copy of the report. As of the filing of your formal complaint, you had received no response.

In his response, Mr. Zoeller stated that on September 4, 2001, an electronic copy of the report was forwarded to you. Mr. Zoeller indicated that the failure to respond was an error on the part of a new administrator in their office, who apparently had questions about how to provide this information to you in an acceptable format. Unfortunately, that activity was not communicated to you. The Unclaimed Property Division will provide timely, written responses and any necessary oral communication to requestors in the future.

### 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 Attorney General's

Office 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 Attorney General's Office 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 Attorney General's Office did fail to respond to your written request of August 7, 2001 within seven (7) days after receipt, which constituted a denial under Indiana Code section 5-14-3-9(b). While it does not affect my opinion in this matter, it is important to note that the report you requested has now been provided to you.

### CONCLUSION

It is my opinion that the Office of the Attorney General 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 August 7, 2001, which constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Gregory Zoeller, Chief Counsel-Advisory, OAG html>