

August 21, 2000

Mr. S.E. Van Dyke, Sr.
3516 North Rural Street
Indianapolis, IN 46218

Re: Advisory Opinion 00-FC-26 *Denial of Access by the Marion County Small Claims Court, Washington Township Division.*

Dear Mr. Van Dyke:

This is in response to your formal complaint, which was received on August 10, 2000. You have requested an opinion as to whether the Marion County Small Claims Court, Washington Township Division (hereinafter, "Small Claims Court" or "Court,") violated the Access to Public Records Act, Indiana Code chapter 5-14-3 (hereinafter, "APRA,") with respect to your verbal and written requests for access to public records. Judge Lynda F. Huppert responded to your complaint. A copy of her response and attachments are enclosed for your reference.

For the following reasons, it is my opinion that the Court responded within the time frame under Indiana Code section 5-14-3-9 to your verbal request of July 18th. It is also my opinion that your verbal request was sufficiently particular for the Small Claims Court to respond to because they did not hesitate to respond to the same request in response to your written request dated July 24th. The Court also responded in a timely manner to your July 24th written request, unfortunately, there was an clerical error and the public records requested were sent to another person. Upon notification of this error, the Small Claims Court, has mailed these documents to you.

BACKGROUND

According to the facts presented in your complaint, you appeared in person at the Small Claims Court and asked for a copy of a notice of claim and complaint filed by Anthony W. Woods, Plaintiff, against Lorine Van Dyke, Defendant. At that time, you were informed that the Court could not provide this information without a cause or case number to locate the file. On July 24, 2000, you made a second request for the same information, this time in writing, that was received by the Court on July 25, 2000.

In her response, Judge Huppert addressed the allegation that the Court denied access in response to your written request only. According to Judge Huppert, your written request was fulfilled and mailed the day it was received, July 25th. Through a clerical error, the Court sent this material to Mr. Woods, the plaintiff, rather than to you. Upon receipt of your formal complaint, the Court noted its error and on

August 14, 2000, mailed to you the documents 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 Small Claims Court 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 Court 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).

Requests for access must be made with reasonable particularity in order for the public agency to respond and, ultimately, produce public records. Ind. Code §5-14-3-3(a)(1). A public agency, at its discretion, may also require public records requests to be in writing or on a form provided by the agency. Ind. Code §5-14-3-3(a)(2).

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 an oral request within twenty-four (24) hours and 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 Court did respond to both your oral and written requests for public records within the time frames provided under the APRA. The response to your oral request was to tell you that you needed to be more specific, in particular, to provide the cause or case number so that the Court staff could locate the public records requested. Upon receipt of the very same request in writing several days later, however, the Court staff immediately responded and even produced the requested public records. The Court, in error, mailed these records to the plaintiff rather than to you as is evidenced by the attachment to Judge Huppert's response. If this response had been properly addressed, you would have no doubt received the records requested well within the 7 days for the Court to respond under Indiana Code section 5-14-3-9.

There is no indication from the information you provided in your complaint or the Court's response that the Court has a policy that requires public records requests to be in writing under Indiana

Code section 5-14-3-3(a)(2). The Court should have, then been able to provide the requested records in response to your verbal request of July 18th. The request that you provide a cause or case number in order to obtain the records requested, therefore, was not appropriate given the prompt response to your written request, which did not provide that information either. It is my opinion that the response you received on July 18, 2000 to your verbal request was a denial under Indiana Code section 5-14-3-9, and from the response received to your July 24th written request, it is clear that the denial of your verbal request was inappropriate.

CONCLUSION

It is my opinion that the Marion County Small Claims Court, Washington Township Division, did respond to both of your public records requests within the time frames set forth at Indiana Code section 5-14-3-9. Your verbal request of July 18th , however, was sufficiently particular for the Court to produce the public records in question, as was evidenced by the prompt response to your July 24th written request. The denial of your verbal request on July 18th, therefore, was an inappropriate denial under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Judge Lynda F. Huppert, WTSCC
