

September 11, 2000

Mr. Dwight D. Wilkerson
3021 E. 98th Street, Suite 140
Indianapolis, IN 46280

Re: Advisory Opinion 00-FC-31 *Denial of Access to Public Records by the Indiana State Police Department.*

Dear Mr. Wilkerson:

This is in response to your formal complaint, which was received on September 1, 2000. You have alleged that the Indiana State Police Department (“Department”) has violated the Indiana Access to Public Records Act (“APRA,”) Indiana Code chapter 5-14-3, by failing to provide the documents you requested within seven (7) days of receiving your requests. Mr. Melvin J. Carraway, Superintendent of the Department, responded in writing to your complaint in a letter dated September 5, 2000. A copy of his response is enclosed for your reference. It is my opinion that, since the APRA does not set a specific time for producing records, only for responding to requests, the Department has not denied you access by failing to produce the requested records within seven (7) days of your request.

BACKGROUND

According to your complaint, you hand delivered two public record requests on August 11, 2000. You requested copies of all records and documents, including any travel vouchers, that evidence any out-of-state travel and copies of all cellular telephone records for fiscal years 1996-1997, 1997-1998, 1998-1999 and 1999-2000, for six (6) employees of the Department. The Department responded to you in a letter dated August 16, 2000 that your requests had been received and that the requested documents were being compiled. Then, according to your complaint, you followed up on your requests on August 24, 2000 and were informed by Department staff only that the records would be produced “in a while.” On September 1, 2000, you filed your formal complaint with this Office, claiming that the Department denied you access to the records in violation of the APRA by failing to produce the requested documents within seven (7) days of your requests.

In his response to your complaint, Superintendent Carraway noted that the Department received your August 11, 2000 request on August 14, 2000. In a letter dated August 16, 2000, the Department responded to your request, as is required under the APRA. The Department informed you in its response that some of the information will not be disclosed to you under Indiana Code section 5-14-3-4(b)(1), the investigatory records exception, and that such information will be redacted from the documents provided

in response to your request for cellular telephone records. Superintendent Carraway also reported that, in a phone conversation with Staff Attorney Major Anthony Sommer, you were told that the records requested were being retrieved from archives and that they were being copied for you. Major Sommer reported that, in the conversation with you on August 23rd¹, he asked if you wanted the copies of the records as they were completed, or if you preferred to wait until all the documents had been copied. As of the date of Superintendent Carraway's response, the Department had not been advised of your preference. Finally, Superintendent Carraway stated that the Department is continuing its efforts to copy the requested records for you.

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 § 5-15-3-2. 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).

In your complaint, you claim that the Department's failure to produce the requested records within seven (7) days of your request constituted a denial of access under the APRA. As I informed you when you first contacted this Office, there is no period of time for producing public records under the APRA, only for responding to public records requests. Indiana Code section 5-14-3-9 states that

(a) denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made; whichever occurs first.

(b) 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.

Indiana Code §5-14-3-9(a) and (b). If a public agency denies access to a public record under Indiana Code section 5-14-3-9, then the requestor may file an action in circuit or superior court in the county in which the denial occurred to compel disclosure. Ind. Code §5-14-3-9(d).

Since there is no Indiana case law interpreting these provisions, we must rely upon the rules of statutory construction in order to ascertain the General Assembly's intent.

When construing a statute, we seek to ascertain and give effect to the intention of the legislature as expressed in the statute. In so doing, the objects and purposes of the statute in question must be considered as well as the effect and consequences of such interpretation. We presume words appearing in the statute were intended to have meaning, and we endeavor to give those words their plain and ordinary meaning absent a clearly manifested purpose to do otherwise.

Johnson v. State, 721 N.E.2d 327, 332 (Ind. App. 1999). [Citations omitted.]

First, it is clear that Indiana Code section 5-14-3-9 speaks in terms of "denial" and to "refuse," not in terms of production. From the plain language of this provision, denials may take one of two forms. First, a public agency may deny a request by communicating to the requestor that the records requested are not disclosable under the APRA. A denial may also occur when the public agency fails to respond in any fashion to a public records request, either within a twenty-four (24) hour or seven (7) day period, depending on the manner in which the request was received by the public agency.

The focus of your complaint is that the Department has denied you access by failing to produce public records, and you appear to have no concerns about the timing of the Department's response to your request, which was dated August 16th. You claim to have hand delivered your request on August 11th, and the Department claims to have received it on August 14th. The Department did not address the manner in which you delivered your request in response to your formal complaint, but they did not contradict your claim that it was hand delivered. In any event, if your request was hand delivered, the Department should have responded within twenty-four (24) hours of receiving your request, which even by their account, would have been August 15th. You did, however, receive a response dated August 16, 2000 but have complained about the failure of the Department to produce, and for this reason, the focus of this opinion is also the production of the records requested.

From a practical standpoint, a public agency may be able to produce public records immediately in some cases, but more time may be required for production when records that are archived or from which the public agency must separate nondisclosable information from disclosable information in those public records. The effect of interpreting Indiana Code section 5-14-3-9 to require public agencies to produce within either the twenty-four (24) hour or seven (7) day periods would have the effect, in some cases, of requiring public agencies to stop activity on all other matters in order to provide the records requested. While providing information is an essential function of public agencies, the APRA also specifically provides that public agencies shall regulate any material interference with the regular functions or duties of their offices. Ind. Code §§5-14-3-1 and 5-14-3-7(a).

Accordingly, it is my opinion that public agencies must produce public records within a reasonable period of time after receiving a public records request, and the public agency bears the burden of showing that they did produce within a reasonable time given the nature of the request. Ind.

Code §5-14-3-1. Given the volume of documents you requested, the fact that some of the records were in storage, and that the Department must redact nondisclosable information from some of the cellular telephone records, production within seven (7) days of your August 11th requests would be quite burdensome. Under the facts presented, the Department is acting to compile the records you requested and even offered you the opportunity to receive the records as they were being copied for you, all of which appear to be a reasonable approach to accommodating your requests.

It is my opinion that under Indiana Code section 5-14-3-9, public agencies must communicate or respond concerning public records requests within a twenty-four (24) hour or seven (7) day period after receipt of the requests. The failure to communicate constitutes a denial that is actionable in circuit or superior court under Indiana Code section 5-14-3-9(d). If a public agency responds within the time period anticipated under Indiana Code section 5-14-3-9, and produces the disclosable public records within a reasonable time after the request was received, then that public agency has complied with the APRA. Under the facts presented, it is my opinion that the Department's failure to produce the requested records within seven (7) days of your request, therefore, was not a violation of the APRA.

CONCLUSION

It is my opinion that the Indiana State Police Department did not violate the APRA when they did not produce the documents you requested within seven (7) days of receiving your request. The APRA requires only a response to a public records request within a required time period, and production of documents must take place within a reasonable period of time after a request has been received.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Superintendent Melvin Carraway,
Indiana State Police

¹ There is a discrepancy between the dates that you and Major Sommer claim to have spoken on this matter, but it is not important for the purpose of writing this opinion.

Advisory Opinion 00-FC-32
September 11, 2000

