

April 20, 2001

Mr. David Paul Allen
Attorney at Law
5231 Hohman Avenue, Suite 703
Hammond, IN 46320

Re: *Advisory Opinion 01-FC-21*;
Alleged Denial of Access to Public Records by the Schererville Town Court.

Dear Mr. Allen:

This is in response to your formal complaint, which was received on March 23, 2001. You have alleged that the Schererville Town Court ("Town Court") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you requested photocopies of court documents and you did not receive a response to your written request. Mr. David Austgen, Attorney for the Town, responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Town Court failed to respond to your request for access to public records within twenty-four (24) business hours after it was received as is required under Indiana Code section 5-14-3-9(a). This failure to respond in a timely manner did constitute a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you appeared in person at the Town Court offices on March 15, 2001 and requested the opportunity to inspect two (2) case files. You were shown the files and advised the clerk that you needed to obtain copies of the Information and Probable Cause Affidavit from each file. You were advised that it is the judge's policy that your request be put into writing and that you would be required to wait forty-eight (48) hours. You then prepared a handwritten request and informed the clerk that the APRA requires the Town Court to respond within twenty-four (24) hours of its receipt, or by 4:00 p.m. on March 16, 2001. As of the filing of your formal complaint, you had received no response from the Town Court.

In response to your complaint, Mr. Austgen states that according to the Honorable Deborah A. Riga, Town Court Judge, you did appear at the Town Court offices near the end of the work day on Thursday, March 15¹, 2001. Since you were not an attorney of record in the two cases in question, you were asked to put your request in writing. Since the Town Court is closed on Fridays, you were advised that you would get a reply in forty-eight (48) hours because the Town Court would not be open until the

following Monday morning. The days and hours of operation for the Town Court are posted on the Fine Schedule that is posted on the exterior doors of the Town Court building.

On Monday, March 19, 2001, you entered your appearance in the two cases for which you had submitted a public records request. Discovery was ordered in each case that would provide you with the information you had requested and more. At no time during the Court session on March 19th did you mention your request. Judge Riga believed that the matter of your public records request, therefore, had been satisfied.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Town 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 Town 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).

It is the responsibility of the public agency to respond to requests for access to 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. A denial is deemed to have occurred if twenty-four (24) business hours elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9 (a). 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).

According to your complaint, you hand-delivered your request for copies of specific public records on March 15, 2001 but received no response to your request. The fact that the Town Court is closed on Fridays is significant in that you made your request on a Thursday afternoon and the Town Court would not re-open until Monday, March 19th. It is still not clear to me why the Town Court staff would advise you that the reply would be forthcoming in forty-eight (48) hours, because that would have been Saturday, March 17th and the Town Court would not have been open. It may have been that they meant forty-eight (48) business hours, but it was not apparent from your complaint that this is what you were told.

Under the APRA, it is my opinion that the Town Court should have responded within twenty-four (24) business hours after the request was received, or by the end of the business day on Monday, March 19, 2001. The failure to respond to your request was a denial that is actionable under the APRA.

You had asserted in your complaint that a response was due by the afternoon of March 16th, but since the Town Court is closed on Fridays, it is my opinion that you were not entitled to a response until the end of the business day on Monday, March 19th.

There are unique circumstances with respect to your request, however, that are worthy of discussion in this opinion. You did appear before the Town Court on March 19th, the day a response was required under the APRA, and on that day you made your appearance as attorney in the two cases in question and Judge Riga ordered discovery. While I understand that Judge Riga may have considered her discovery order to satisfy your request, it is anticipated under the APRA that a public agency will respond directly to public records requests. The APRA does not state that if discovery has been ordered the Town Court was relieved from responding to your public records request. In this case, I believe there was a misunderstanding by the Town Court concerning your request, but this does not change the fact that you should have received a response to your written request for access to public records some time on March 19th.

On a final note, the Town Court has a policy of requiring persons who are not attorneys of record to submit written requests for access to public records. This is an acceptable practice under the APRA so long as this requirement is applied uniformly. The Town Court should respond to those requests with twenty-four (24) business hours of receipt. The reference to forty-eight (48) hours is certainly confusing given the requirements of the APRA. I encourage the Town Court to ensure that requestors are being informed that they will receive a response within twenty-four (24) business hours-that may extend over a weekend of course given that the Town Court is closed on Fridays. Ultimately, you will receive the documents you requested and more from the Town Court because you are now attorney of record in the two cases in question.

CONCLUSION

It is my opinion that the Schererville Town Court did not respond to your request for access to public records within twenty-four (24) hour business hours of its receipt as is required under Indiana Code section 5-14-3-9(a). This failure to respond was a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. David Austgen, Attorney
Town of Schererville

¹ Mr. Austgen referred to March 19th in his letter as the date of your request, but March 15th is the correct date.