

July 23, 2001

Mr. J. Bradley Thurston, M.D.  
c/o Donald D. Levenhagen  
Hill Fulwider McDowell Funk & Matthews  
One Indiana Square, Suite 2000  
Indianapolis, IN 46204-2031

Re: *Advisory Opinion 01-FC-38; Alleged Denial of Access to Public Records by the Indiana Department of Natural Resources.*

Dear Dr. Thurston:

This is in response to your formal complaint, which was received on July 12, 2001. You have alleged that the Indiana Department of Natural Resources ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you requested access to various public records from the Department and did not receive a response to your request. Ms. Carrie Doehrmann, Chief of Staff/General Counsel for the Department responded in writing to your complaint and a copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Department's failure to respond to your written request within seven (7) days after it was received was a denial that is actionable under the APRA.

### BACKGROUND

According to your complaint, on June 15, 2001, your attorney, Mr. Donald Levenhagen, sent a written request to Ms. Doehrmann for a copy of documents in the possession of the Department that pertain to you, your wife, Susan Thurston, or your farm located in Owen County, Indiana. You filed your formal complaint because more than seven (7) days had passed and you had not received a response from the Department.

In response to your complaint, Ms. Doehrmann admitted that the Department received your written request on June 18, 2001, while she was out of the office. One of the staff attorneys for the Department who was reviewing Ms. Doehrmann's mail in her absence did forward your request to the appropriate staff in the Division of Fish and Wildlife for response. Unfortunately, the staff did not respond to you or your attorney concerning your request.

On July 12, 2001, Staff Attorney Greg Ellis contacted your attorney by telephone and advised him that some of the requested public records were available in the Department's Indianapolis office and would be sent to him by mail. With respect to other public records responsive to your request, those records are stored off-site so Mr. Ellis and your attorney agreed that once retrieved they would be made available at for inspection on a mutually agreeable date. Mr. Ellis mailed the public records available at the

Indianapolis office on July 13, 2001, as is evidenced by his cover letter to Mr. Levenhagen. A copy of that letter is enclosed for your reference.

## 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 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 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. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. 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).

According to your complaint, you mailed your request to the Department and did not receive a response to your request within seven (7) days after the Department should have received it. In fact, your formal complaint was received almost one month after the date of your request; the Department admitted that they received it on June 18<sup>th</sup>. Clearly, more than seven (7) days passed without the required response under the APRA. For these reasons, it is my opinion that under the APRA, this failure to respond to your request constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

## CONCLUSION

It is my opinion that the Indiana Department of Natural Resource's failure to respond to your written request for access to public records within seven (7) days after it was received was a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Carrie Doehrmann, DNR html>