

December 18, 2001

Mr. Rex G. Fisher
0200 U.S. 20 West
LaGrange, IN 46761

Re: *Advisory Opinion 01-FC-76*;
Alleged Denial of Access to Public Records by the LaGrange County Public Library.

Dear Mr. Fisher:

This is in response to your formal complaint, which was received on December 14, 2001. You have alleged that the LaGrange County Public Library ("Library,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you have tried to access copies of correspondence from Library Director Mary Hooley to Library Board members for the period August 2000 through November 2001 and have not received them. Ms. Hooley 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 Library did not deny you access to public records under the APRA because the records you requested do not exist.

BACKGROUND

According to your complaint, on November 27, 2001, you sent a written request to the Library for copies of "monthly cover letters, from August 2000 through November 2001" which are sent to the Library Board members with the monthly meeting agenda and packets of materials. You sent a second letter to Ms. Hooley dated December 5, 2001 asking that she provide you with a letter explaining her denial of access to these cover letters. You then filed your complaint with this Office on December 14th alleging that you never received a response to your December 5, 2001 letter.

In response to your complaint, Ms. Hooley stated that she has kept copies of all documents sent to the Library Board members since you filed your prior complaint with this Office in June 2001. She stated that she has informed you of this, but that since she did not personally keep copies of any of the cover letters prior to that time, she has no records to produce to you. Ms. Hooley also stated to me by telephone that since your complaint to this Office in June 2001, she has not been preparing cover letters, but puts a full copy of what is sent to each Library Board member into the official minutes. For these reasons, it is her position that you have not been denied access under the APRA.

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 Library 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 Library 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).

Under the facts presented, Ms. Hooley appears to have responded to your November 27th request. At that time, she told you that you could access all correspondence to the Library Board members in the official meeting minutes. Your December 5th letter appears to be your request for a written explanation of the denial of access to cover letters that you assert should have produced in response to your November request. You asked that Ms. Hooley "respond in writing as to why [you were] being denied access to these letters."

Under the APRA, a public agency is required to respond to requests for public records that are maintained or filed by or with those agencies. A public agency is generally not required to create a public record that does not currently exist in order to respond to a public records request. Ms. Hooley did not keep copies of any cover letters to the Library Board members she created pre-June 2001 and has not created any cover letters since that time. The Library has no records to disclose to you in response to your request for copies of such cover letters and it is my opinion that the failure to do so would not be a denial under the APRA.¹

CONCLUSION

It is my opinion that the LaGrange County Public Library did not deny you access to public records under the APRA because the records you requested do not exist.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Mary Hooley, Director
LaGrange County Public Library

¹ The issue of whether Ms. Hooley should have maintained the cover letters created prior to June 2001 is a records management issue, not an access to public records issue. If you have questions about this, you should contact your county commission on public records.