

May 17, 2002

Mr. Leon Hollingsworth  
#994173 C-446  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-15*;  
Alleged Denial of Access to Public Records by the Gary City Clerk's Office.

Dear Mr. Hollingsworth:

This is in response to your formal complaint, which was received on May 2, 2002. You have alleged that the Gary City Clerk's Office ("Clerk's Office") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Clerk's Office failed to respond to your public records request. Mr. Macarthur Drake, Attorney for the Clerk's Office, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Clerk's Office did not violate the APRA with respect to the your April 10, 2002 public records request.

### BACKGROUND

According to your complaint, on April 10, 2002 you mailed a public records request to the Clerk's Office requesting a copy of the affidavit for probable cause and the charging information for Cause number 45H03-9711-CM-4198. As of the filing of your formal complaint, you allege that you had received no response from the Clerk's Office.

In his response, Mr. Drake stated that, after surveying the staff and files, the Clerk's Office has no record of receiving your April 10th public records request.

### 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 Clerk's Office is clearly a public agency for the purpose of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk's Office 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 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 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 of the county 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 appears that the Clerk's Office did not receive your April 10th request. The fact that you received no response to a request that was never received is not a violation of the APRA. It is my opinion, therefore, that the Clerk's Office did not violate the APRA with respect to your public records request of April 10th. I recommend that you send a new request to the Office, and if possible, do so by certified mail so that you can verify that your request was received.

### CONCLUSION

It is my opinion that the Gary City Clerk's Office did not violate the Access to Public Records Act with respect to your April 10, 2002 request for public records because the Clerk's Office never received that request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Macarthur Drake, Attorney w/o enclosure

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