

October 1, 2002

Mr. George E. Hopkins  
P.O. Box 33255  
Indianapolis, IN 46203

Re: *Advisory Opinion 02-FC-47*; Alleged Denial of Access to Public Records by the Indiana Department of Correction.

Dear Mr. Hopkins:

This is written in response to your formal complaint, which was received on September 18, 2002. You have alleged that the Indiana Department of Correction ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a public records request to the Department, which was received August 12th, but that you did not receive a response to your request. Ms. Pam Pattison, Director of Media and Public Relations 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, you sent via certified mail a request for access to various public records of the Department to Ms. Pattison. An agent for Ms. Pattison signed for your request on August 12, 2002. After you did not receive a response to your request, you filed your formal complaint with this Office.

In response to your complaint, Ms. Pattison acknowledged that your request for access to public records was received in her office. She stated that it was not the intent of the Department to deny you access to any documents, but that the failure to respond was isolated neglect. Ms. Pattison stated that the Department will provide you with any documents that are available that address your 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. 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 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).

According to your complaint, you mailed your request by certified mail to the Department and did not receive a response to your request within seven (7) days after the Department received it. 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). While this does not alter my opinion in this matter, it is important to note that the Department will provide you with any documents that are available and responsive to your request.

### CONCLUSION

It is my opinion that the Department of Correction'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

Enclosure cc: Ms. Pam Pattison, DOC

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