

November 7, 2002

Mr. Larriante J. Sumbry
#965137 C-455
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-53*; Alleged Denial of Access to Public Records by the Hammond City Court.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on October 25, 2002. You have alleged that the Hammond City Court ("Court") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Court failed to respond to your public records requests dated October 15th. Judge Jeffrey Harkin responded by telephone to your complaint. For the reasons set forth below, it is my opinion that the Court did not violate the APRA with respect to your October 15th public records request.

BACKGROUND

According to your complaint, on October 15, 2002 you made a request to the Court for various public records with the:

1. The name and address of the judge who sentenced you on May 7, 1996, and
2. the names of the Hammond Chief Public Defender and Prosecutor on Cause Number 96-1405.

You did not provide this Office with a copy of your public records request to the Court. When you did not receive a response by October 22, 2002, you filed your complaint with this Office.¹ As of the filing of your formal complaint, you allege that you had received no response from the Court.

In response, Judge Harkin stated that he does not have any record of whether your request was received in his Office. According to Judge Harkin, such requests are typically sent to the Hammond City Clerk with an order to provide the requested public records. The Court, therefore, does not maintain the public records you requested, the Clerk does.

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 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 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 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 is not clear whether the Court ever received your request. Since you did not provide a copy of your original request, it was even more difficult to verify its receipt. For this reason, it is my opinion that the Court did not deny you access to public records in violation of the APRA because there is nothing to indicate that the Court received your request. It is also important to note that your request was directed to the wrong public agency. If you wish to obtain access to court records for the Hammond City Court, you should direct future requests to the Hammond City Clerk's Office.

CONCLUSION

It is my opinion that the Hammond City Court did not violate the Access to Public Records Act with respect to your October 15, 2002 request for access to public records because it is unclear whether the Court ever received your request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable Jeffrey Harkin, Judge,
Hammond City Court

¹ The public agency has seven (7) days from receipt of your request to respond. You appear to have sent your formal complaint without allowing adequate time for the public agency to receive your request and to respond.