

November 8, 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-56*; 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 November 4, 2002. You have alleged that the Lake Superior 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 23rd. Judge Daniel Molter of the Newton Superior Court responded by telephone to your complaint.¹ For the reasons set forth below, it is my opinion that the Court did not respond to your request within the time period required under the APRA, but that any public records concerning your case are on file with the Lake County Clerk, not the Court.

BACKGROUND

According to your complaint, on October 23, 2002 you made a request to the Court for copies of the following public records regarding Cause Numbers 45G01-9908-CF-153 and 45 G01-9908-CF-148:

1. The omnibus hearing transcripts
2. the transcripts of a hearing held September 9, 2002;
3. the police file;
4. the prosecutor's file;
5. the name of the special judge;
6. the flat file; and
7. the street file.

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 30, 2002, you filed your complaint with this Office.² As of the filing of your formal complaint, you allege that you had received no response from the Department.

In response, Judge Molter stated that he probably did receive your request but that he does not intend to provide any response to you. He said he has informed you that the records concerning the cases you referenced are maintained by the Lake County Clerk's Office.

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, Judge Molter stated that he probably did receive your request, but you did not provide a copy of your original request, so it difficult to verify whether or not he received it. In any event, Judge Molter advised me that he has no plans to respond to your request. For this reason, it is my opinion that by failing to respond to your public records request within the seven (7) days required under Indiana Code section 5-14-3-9, the Court did deny you access to public records in violation of the APRA. It is also important to note, however, that your request was directed to the wrong public agency. If you wish to obtain access to court records for the Court, you should direct future requests to the Lake County Clerk's Office.

CONCLUSION

It is my opinion that the Lake Superior Court by Special Judge Daniel Molter did violate the Access to Public Records Act with respect to your October 23, 2002 request for access to public records because the Court failed to respond within seven (7) days after receiving the request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable Daniel Molter, Judge,
Newton Superior Court

¹ Judge Molter has been appointed as special judge for your case, therefore, the Lake Superior Court forwarded your complaint to him.

² 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. In the future, I recommend that you include time for mailing, both to the agency and from the agency to you.