

November 14, 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-57*; ; Alleged Denial of Access to Public Records by the Newton Superior Court, No.1.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on November 6, 2002. You have alleged that the Newton Superior Court, No. 1 ("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 request dated October 28th. Judge Daniel Molter responded to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Court did not respond to your public records request within the time frame set forth at Indiana Code section 5-14-3-9(b) and that this was a denial that is actionable under the APRA.

### BACKGROUND

According to your complaint, on October 28, 2002 you made a request to the Court for various public records related to Cause Numbers 45G01-9908-CF-148 and 45G01-9908-CF-153:

1. Omnibus hearing transcripts;
2. Police files;
3. September 9th transcript of hearing;
4. Prosecutor file;
5. Street file; and
6. Flat file.

When you did not receive a response by November 5, 2002, you filed your complaint with this Office.<sup>1</sup> As of the filing of your formal complaint, you allege that you had received no response from the Court.

In response, Judge Molter explained that he was a Special Judge in your case, but that he no longer has jurisdiction over your case. For this reason, he does not believe he is required to respond to your public records requests, or any other correspondence that you send to him.

## 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 appears that Judge Molter did receive your October 28th request but it is his position that he is not required to provide documents to you or to order the Lake County Clerk to do so since he no longer has jurisdiction in your case. The APRA does reference the Court as a public agency and as such, even if the Court did not have the records you requested, you were entitled to a response under Indiana Code section 5-14-3-9(b). For this reason, it is my opinion that the Court did deny you access to public records in violation of the APRA by failing to provide a response to your public records request.

As a point of clarification, this opinion does not mean that it is also my opinion that the Court was required to obtain or acquire these public records for you. The APRA merely provides that as a public agency under the APRA the Court should have responded to your request and provided you with access to any public records maintained by the Court. If the Court does not maintain any of these public records, that response could have legitimately been that the Court did not have any records responsive to your request. In any event, I suggest that you read Judge Molter's response carefully and consider directing your public records requests to the public agencies that maintain these records.

## CONCLUSION

It is my opinion that the Newton Superior Court No. 1 did violate the Access to Public Records Act with respect to your October 28, 2002 request for access to public records when you received no response within seven (7) days after that agency received your request. This denial is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

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

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<sup>1</sup> 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 by mail and to respond.