

December 3, 2002

Mr. Harold T. Harper
Harper and Rogers
304 W. U.S. Highway 6
Valparaiso, IN 46385

Re: *Advisory Opinion 02-FC-60*; Alleged Violation of the Access to Public Records Act by the Hobart Police Department.

Dear Mr. Harper:

This is written in response to the formal complaint you filed on behalf of John Hanna, Denise Fitzpatrick and Sandra Harris, which was received on November 8, 2002. You have alleged that the Hobart Police Department ("Department") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Department denied you access to public records by failing to respond to your October 18, 2002 request. Mr. John Bushemi, attorney for the Department, responded in writing to your complaint. For the reasons set forth below, it is my opinion that the Department did not respond to you within the time period required under Indiana Code section 5-14-3-9(b) and that this failure to respond constituted a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you sent the Department a request for public records on October 18, 2002 by certified mail and facsimile transmission. In that request, you asked for copies of department logs, records and reports concerning particular persons and addresses. When you had received no response to your request as of November 7, 2002, you sent your formal complaint to this Office.

In response to your complaint, Mr. Bushemi stated that a response was sent via facsimile to you on November 8, 2002. He stated that a significant amount of time and labor was required to retrieve and assemble the requested public records. Mr. Bushemi also enclosed a copy of his November 25, 2002 letter to you that accompanied the copies you requested. It is Mr. Bushemi's position that there was no denial of access with respect to 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. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail or facsimile 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 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 the information provided, the Department did receive your public records request, but failed to respond within the seven (7) day period after receiving that request. For this reason, it is my opinion that the Department did deny you access in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(b). While this does not alter my opinion, the Department has now produced public records in response to your October 18th request.

CONCLUSION

It is my opinion that the Hobart Police Department did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that this constituted a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: : Mr. John Bushemi, Attorney for HPD
