

January 3, 2003

Mr. Brant E. Klemm
Indiana-Illinois-Iowa Federation for Fair Contracting
29040 Lath Trail
North Liberty, IN 46554

Re: *Advisory Opinion 02-FC-68*; ; Alleged Denial of Access to Public Records by the Indiana Department of Transportation.

Dear Mr. Klemm:

This is in response to your formal complaint, which was received on December 6, 2002. You have alleged that the Indiana Department of Transportation ("Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department failed to respond to two requests for access to public records from your organization within the time frame required under the APRA. Although it was requested, the Department did not provide a response to your formal complaint.¹ For the reasons set forth below, it is my opinion that the Department did violate the APRA by failing to respond to your requests for access to public records within the time frame indicated under Indiana Code section 5-14-3-9.

BACKGROUND

According to your complaint, your organization made two requests for access to public records of the Department dated October 31, 2002.² You signed one of the requests that asked for copies of all certified payroll records and any addendum related to the Department's Contract number R-26174-A. You sent this request via certified mail, return receipt to Ms. Whiteman. The return receipt indicates that someone accepted the letter for Ms. Whiteman on November 4, 2002. The other request was written by Mr. Thomas Frailey, also a representative of your organization, to Ms. Whiteman asking for copies of additional payroll records related to Department Contract number R-24433-B. According to your complaint, you did not receive any response to either of these requests. You then filed your formal complaint with this 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 Department is clearly a public agency for the purpose 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 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).

Since there was no response to your formal complaint from the Department, the facts as you have presented them forms the basis for this Opinion. According to your complaint, one of the two (2) requests was received by the Department on November 4, 2002 and presumably the other request was received at or about the same time. Your complaint also states that the Department did not respond to either request. For this reason, it is my opinion that the failure of the Department to respond to your requests for access to public records within seven (7) days of receiving them was a denial under the APRA. These denials are actionable in court under Indiana Code section 5-14-3-9(d).

CONCLUSION

It is my opinion that the Indiana Department of Transportation denied you access to public records under the APRA when it failed to respond to your written requests within seven (7) days of receiving them. These denials are actionable in court under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Kelly Whiteman, INDOT w/o enclosure

¹ Copies of your formal complaint were sent via facsimile to Ms. Kelly Whiteman of the Department on December 6 and 31, 2002.

²You had also included another request written by Mr. Thomas Frailey of your organization on October 1, 2002 as well. Under Indiana Code section 5-14-5-7, a formal complaint may only deal with alleged denials within thirty (30) days prior to the filing of the complaint. For this reason, we cannot address the October 1st request in this Opinion.