

November 30, 1999

Ms. Kay Bell
R.R. 1, Box 172
Shoals, IN 47581

Re: *ADVISORY OPINION No. 99-FC-17:*

Denial of Access to Public Records by the Indiana Department of Environmental Management.

Dear Ms. Bell:

This is in response to your formal complaint, which was received on November 4, 1999. You have requested an opinion as to whether the Indiana Department of Environmental Management (hereinafter, "Department,") violated the Access to Public Records Act, Indiana Code chapter 5-14-3 (hereinafter, "APRA,") with respect to your request for access to public records, which was dated September 28, 1999. The Department responded directly to you in a letter dated November 10, 1999, from Assistant Commissioner William Divine, informing you that there was no record that your request had ever been received. For this reason, it is my opinion that the Department's failure to respond cannot be characterized as a denial under the APRA.

BACKGROUND

According to the facts presented in your complaint, you made a written public records request to Mr. Rick Miranda of the Department, which was dated September 28, 1999. A copy of your request was submitted with your formal complaint form. As of the date of your complaint, November 4, 1999, you had received no response to your written request.

In his response to your formal complaint, Mr. Divine indicated that the Department had no record of receiving your request prior to receiving the formal complaint from this Office. Mr. Divine further provided you with information about public records in the Department's possession and information on how you might be able to inspect and copy these public records in accordance with the APRA.

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 α 5-14-3-1. The

Department is clearly a public agency for the purposes of the APRA. Ind. Code α 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 α 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 α 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 α 5-14-3-9(d).

There is no evidence that the Department did receive your written request of September 28, 1999. It is my opinion that the Department's failure to respond to your request within the time period specified under Indiana Code section 5-14-3-9(b) did not constitute a denial under the APRA. The Department has provided you with information as a result of your formal complaint, however, which should prove helpful to you in accessing the public records.

CONCLUSION

It is my opinion that the Indiana Department of Environmental Management's failure to respond to a written public records request was not a denial under the APRA if the Department never received your request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Ann S. Long, IDEM