

August 2, 2004

Mr. Paul Berkbile
1454 West 94th Place
Crown Point, IN 46307

Re: Advisory Opinion 04-FC-123; Alleged Denial of Access to Public Records by the Schererville Town Court

Dear Mr. Berkbile:

This is in response to your formal complaint, which was received on July 26, 2004, and which qualifies for priority status under 62 IAC 1-1-3. You allege that the Schererville Town Court ("Court") violated the Access to Public Records Act ("APRA") Ind. Code §5-14-3. Specifically, you state that the Court failed to respond to your written request, which was sent to the Court on July 9, 2004, return receipt requested, and which was received by the Court on that same day. I sent a copy of your complaint to Judge Kenneth L. Anderson on July 26, 2004, the day it was received by this office. Although the Court advised this office that we would be receiving their response by July 29, 2004, as of the writing of this opinion, no response has been provided on behalf of the Court.

BACKGROUND

On July 9, 2004, you submitted to the Court a request for 1) the full name and legible copy of the oath of office for any judge or magistrate presiding over the bench on July 27, 2004, 2) any and all manuals/books/lists, that officers carry, which inform them of what codes correlate to which infractions, 3) a copy of any and all compelling discovery requests/orders given, sent, or told to receiving parties of this request from the Schererville Town Court, and 4) the EIN (Employee Identification Number) of the Town of Schererville." The Court received that request on July 9, 2004, as evidenced by the return receipt. Your complaint states that you received no response 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." I. C. §5-14-3-1. The Court is a public agency for the purposes of the APRA. I. C. §5-14-3-2. Accordingly, the

public 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. I. C. §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. A public agency is required to make a response to a mailed request within seven (7) days after it is received. Failure to do so constitutes a denial under the APRA. I. C. §5-14-3-9(b). Pursuant to the APRA, if such a denial has occurred, 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. I. C. §5-14-3-9(e).

The APRA does not set any specific deadlines for producing requested public records. What is contemplated, in terms of that response, is a communication to the requestor. For example, a public agency may advise 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 might also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

The Court has failed to respond to your specific, July 9, 2004 request information. If the Court has the records requested, or if there are no such records, the Court should have communicated that to you within the time periods contemplated under the APRA. If the information is confidential or otherwise nondisclosable, the Court should advise you of such, and should reference the exception from disclosure under I. C. §5-14-3-4.

CONCLUSION

It is my opinion that the Court failed to respond to your specific request for information within seven (7) days as is required under I. C. § 5-14-3-9(b), and that the failure to respond is a violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: The Honorable Kenneth L. Anderson, w/out enclosures