

January 14, 2008

John McCullough
PO Box 321
Zionsville, Indiana 46077

Re: Formal Complaint 08-FC-9; Alleged Violation of the Access to Public Records Act by the Center Township Small Claims Court

Dear Mr. McCullough:

This is in response to your formal complaint alleging the Center Township Small Claims Court ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Township's response for your reference. It is my opinion that while the response to the request was untimely, the Court did not otherwise violate the APRA.

BACKGROUND

In your complaint you allege that you submitted to the Court a request for access to records dated November 13, 2007. Specifically, you requested information regarding employees of the court. You requested a breakdown of employees based on race or ethnic origin as well as gender. Receiving no response, you mailed your complaint on December 13, and I received it on December 17.

The Court responded to your complaint by electronic mail message from Vanessa Powell, Director of Human Resources for Center Township. It is my understanding you received a copy of the response as well. Ms. Powell included the salary information for Court employees. Ms. Powell indicated that the race and gender information is not provided because the office does not maintain a list of employees by race and/or gender. Ms. Powell further indicated the delay in response was a result of the request being sent to the appropriate agency. The request should have been directed to the Center Township of Marion County office rather than the Court.

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 clearly a public agency for the purposes of the APRA. I.C. §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 the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). The response is not necessarily required to include production of the records. In a response the agency should acknowledge the request has been received and indicate how and when the agency intends to comply. The records should be produced within a reasonable period of time.

It is my understanding the Court received your request and the Court staff filed it with the Judge's mail for her review. Even though the Court does not maintain the records responsive to the request, the Court was required to respond to the request (or send it to the appropriate agency for response within the statutory time for response). *See* I.C. §5-14-3-9.

As I understand it, the Township has now provided you with the records it maintains responsive to your request. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. As such, neither the Court nor the Township violated the APRA by not providing the race and/or gender information you requested.

CONCLUSION

For the foregoing reasons, it is my opinion that while the response was untimely, the Court has not otherwise violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Vanessa Powell, Center Township of Marion County
Judge Michelle Smith-Scott, Center Township Small Claims Court