

July 6, 2000

Ms. Charlotte D. Hammond
1318 S. 1075 E.
Akron, Indiana 46910

Re: Advisory Opinion 00-FC-17 *Denial of Access to Public Records by the Akron Advisory Plan Commission.*

Dear Ms. Hammond:

This is in response to your formal complaint, which was received on June 20, 2000. You have alleged that the Akron Advisory Plan Commission ("Commission,") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3, by failing to respond to your requests for access to meeting memoranda and minutes. Mr. Phil Allen, President of the Commission, responded in writing to your complaint in a letter dated June 25, 2000. A copy of his response is enclosed for your reference. It is my opinion that the Commission denied you access to public records under the APRA when it failed to respond to your request within the time period required under Indiana Code section 5-14-3-9 and this denial is actionable under Indiana Code section 5-14-3-9(d).

BACKGROUND

According to your complaint, you hand-delivered several public records requests to the Commission in care of the Town Clerk-Treasurer¹ on June 9, 2000. You requested copies of memoranda for meetings held February 17, March 7, April 4 and June 8, 2000 and copies of meeting minutes or draft minutes for April 4 and June 6, 2000. You contacted the Clerk-Treasurer by telephone at the end of the business day on June 16, 2000 and learned that no responses to your requests had been deposited in her office.

In his response, President Allen indicated that the Commission did not intend to deny you access to the requested public records. He admitted there was no excuse for the failure to get the records to the Town Office. President Allen did suggest that the failure to respond was due to various circumstances, including new membership on the Commission, including himself. Also, he pointed to the failure of the newly elected secretary of the Commission to attend three successive meetings as well as his own failure to ensure that the memoranda and minutes that were created were delivered to the Town Office as affecting the timely response to your requests. According to his response, President Allen has instructed members of the Commission to deliver information to the Town Office as soon as possible. He also provided responses to each of your requests with his response, copies of which have been provided to

you.

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 Commission is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. The Commission is also a governing body for the purposes of the Open Door Law, Indiana Code chapter 5-14-1.5. Ind. Code §5-14-1.5-2(b). Accordingly, any person has the right to inspect and copy the public records of the Commission 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).

Governing bodies of public agencies are required to create memoranda of their meetings and make those memoranda available for inspection and copying within a reasonable time after the meeting takes place. Ind. Code §5-14-1.5-4(b). Meeting minutes are not required under the Open Door Law, but if created, must be available for public inspection and copying. Id.

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. 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.

As noted in your complaint, a public agency is required to respond to written requests that have been mailed or sent by facsimile within seven (7) days after receipt. Ind. Code §5-14-3-9(b). When a person appears in a public agency's office and hand-delivers a written request, however, the public agency has twenty-four (24) hours from the receipt of that request to respond; the failure to do so constitutes a denial under the APRA. Ind. Code §5-14-3-9(a). 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).

Under the facts presented, it is my opinion that the Commission failed to respond to your written requests of June 9, 2000 within twenty-four (24) hours after receipt, which constituted denials that are actionable under Indiana Code section 5-14-3-9. The Commission has responded to your requests since the filing of your formal complaint, but this does not excuse their failure to respond under Indiana Code section 5-14-3-9.

CONCLUSION

It is my opinion that the Akron Advisory Plan Commission failed to respond within the time period required under Indiana Code section 5-14-3-9(a) to your June 9, 2000 public records request, and that failure to respond constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

cc: Mr. Phil Allen, President
Akron Advisory Plan Commission

[1](#) You delivered these requests in compliance with a procedure required by the former president of the Commission, Bob Allen. In his response to your complaint, President Phil Allen did not contest this procedure, so for the purposes of this opinion, the delivery to the Town Office constituted delivery to the Commission.
