

March 5, 2001

Mr. James E. Matney  
2637 N. Jacksonburg Road  
Cambridge City, IN 47327

Re: *Advisory Opinion 01-FC-013*; Alleged Denial of Access to Public Records by Wayne County Government.

Dear Mr. Matney:

This is in response to your formal complaint, which was received on February 12, 2001. You have alleged that the Wayne County Community Corrections Advisory Board ("Board") and Wayne County government (which are collectively referred to in this Opinion as "County") have violated the Indiana Access to Public Records Act, ("APRA") Indiana Code chapter 5-14-3. Specifically, you requested photocopies of meeting minutes in two separate written requests dated January 27 and February 1, 2001 and received no response. You also requested a photocopy of a non-retaliatory policy for Wayne County Community Corrections ("WCCC") employees on January 19, 2001 and did not receive it. Mr. Ronald L. Cross, County Attorney, responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the County did not respond to your requests for access to public records within the twenty-four (24) hour period required under Indiana Code section 5-14-3-9(a). These failures to respond in a timely manner did constitute denials that are actionable under the APRA. With respect to your January 19, 2001 request, however, it is also my opinion that the County did not deny access to you under the APRA in failing to provide a nonexistent agenda or policy.

#### BACKGROUND

According to your complaint, on January 19, 2001, you hand-delivered a request to the County for photocopies of the agenda of the Board meeting held December 13, 2000 and the written, expressed nonretaliatory policy for WCCC employees in effect as of September, 2000. On January 26th, the County provided you with a copy of the meeting agenda for the Board's September 13, 2000 meeting, but did not provide any specific nonretaliatory policy to you.

On January 27, 2001, you requested photocopies of meeting minutes for the September 13, 2000 meeting of the Board and minutes of the meeting at which harassment charges by Linda Matney were discussed by the Board. In another request dated February 1, 2001, you again requested the meeting minutes of the September 13th meeting of the Board and copies of all January 2001 meeting minutes for

the Board. When you received no response to these two requests, you filed your formal complaint with this Office.

In response to your complaint, Mr. Cross stated that there were no meetings of the Board in December, 2000, thus they did not deny access to the agenda you requested for that time period. With respect to the nonretaliatory policy, Mr. Cross stated that the only policy of this nature was provided to you by Assistant County Attorney Clay Miller and that there is no other applicable policy.

With respect to your January 27th and February 1st requests, Mr. Cross stated that a notice had been prepared for a September 13, 2000 executive session, but that this meeting was cancelled and no minutes were prepared. Mr. Cross also stated that after reviewing all Board meeting minutes for the year 2000, there are no minutes that reflect any discussion of harassment charges by Ms. Matney. Finally, Mr. Cross explained that the Board did meet on January 11th and January 25th, but that the minutes of the latter meeting had not been drafted as of the receipt of your February 1st request. The delay in responding was due in part to the fact that your request was delivered to the chairman, not to the designated person for this purpose. In addition, Mr. Cross indicated that they had no intention of denying you access to the January minutes, but planned to provide copies for both meetings to you at the same time. Mr. Cross did provide you with copies of these meeting minutes as well as a copy of his response to 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 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Board is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board 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). There is nothing, however, in the APRA that requires a public agency to create a new record in order to respond to a request.

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. For hand-delivered requests, a denial is deemed to have occurred if twenty-four (24) hours elapse after the agency receives the request and there has been no response. 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).

According to your complaint, you hand-delivered all of your written requests to the County. The County should have responded within twenty-four (24) hours after each of the requests were received. It appears that you did not receive a timely response, as described in the preceding paragraph, within the twenty-four (24) hours of hand-delivery of each of the requests. It is my opinion, therefore, that the failures of the Board to respond within the time frame contemplated under Indiana Code section 5-14-3-9, constituted denials that are actionable under Indiana Code section 5-14-3-9(d).

You did, however, receive a response and copies of public records in response to your January 19th request prior to filing your formal complaint with this Office. Your allegation of denial on this request appears to be predicated upon the basis that the County did not provide the public records you requested. You claim that the Board did not provide you with photocopies of an agenda for a December 2000 meeting or a written nonretaliatory policy for employees of the WCCC. In response to your formal complaint, Mr. Cross advised you that there was no meeting of the Board in December and that they have provided you with the only policy that the County has that is responsive to your request for a written nonretaliatory policy. It is my opinion that, since the County did not have the agenda or a more specific nonretaliatory policy, you were not denied access to public records under the APRA in the County's response to your January 19th request.

With respect to your January 27th and February 1st requests, it appears that the County has now provided you with a response and copies of any public records that are responsive to these requests. While this does not remedy the Board's failure to respond within the time period contemplated under Indiana Code section 5-14-3-9(a), you now have the public records responsive to your two latter requests.

## CONCLUSION

It is my opinion that the Wayne County Community Corrections Advisory Board and Wayne County Government did not respond to your requests for access to public records within the twenty-four (24) hour period required under Indiana Code section 5-14-3-9(a). These failures to respond did constitute denials that are actionable under the APRA. With respect to your January 19, 2001 request, however, it is also my opinion that in the production of public records, the County did not deny you access under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Ronald L. Cross, County Attorney

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