

March 27, 2001

Mr. Larriante J. Sumbry
#965137 2W-13
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 01-FC-15*; Alleged Denial of Access to Public Records by the Gary Police Department.

Dear Mr. Sumbry:

This is in response to your formal complaint, which was received on February 26, 2001. You have alleged that the Gary Police Department ("Department") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Department denied you access to copies of various public records by failing to respond to your request. The Department did not respond to your request.¹ For the reasons set forth below, it is my opinion that the Department did not respond to you within the time period required under Indiana Code section 5-14-3-9(b) and that this failure to respond constituted a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, on February 14, 2001 you sent a written request to the Department for information concerning arrest reports, arrest records, arrest warrants, probably cause affidavits and Miranda signature.² When you did not receive any response to your request, you filed a formal complaint with this Office on February 22, 2001.

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 Department 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 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 § 5-14-3-3(a).

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. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. Ind. Code §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 § 5-14-3-9(d).

According to the information provided, it is apparent that you did not receive a response on or before February 22, 2001 because you executed your formal complaint form on February 1st. It is my opinion, therefore, that the Department did not provide a timely response to your February 14th public records request and that this denial is actionable under Indiana Code section 5-14-3-9(d).

CONCLUSION

It is my opinion that the Gary Police Department did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that this constituted a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

cc: Chief Roby, Gary Police Department

¹ I contacted the Department for a response, which was due on March 6, 2001. I did contact the Department by telephone four times between March 15 and March 26, but no written response was provided. Since today is the 30th day, under Indiana Code section 5-14-5-9 I must issue this opinion without the benefit of a response to the allegations you raised in your complaint.

² You did not attach a copy of your request so it was not clear to me whether you had made a reasonably particular request to the Department under the APRA. See, IC 5-14-3-3(a).