

September 24, 2001

Mr. Charles J. Troutman  
7502 Muirfield Place  
Indianapolis, IN 46237

Re: Advisory Opinion 01-FC-50; Alleged Denial of Access to Public Records by the Indiana Department of Administration.

Dear Mr. Troutman:

This is in response to your formal complaint, which was received on August 30, 2001. You have alleged that the Indiana Department of Administration ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you hand-delivered a public records request to the Department on August 27th but that you did not receive a response to your request. Mr. F. Daniel Gettelfinger, Staff Counsel for the Department, 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 Department did respond to your request within twenty-four (24) hours after it was received and that no violation of the APRA occurred.

### BACKGROUND

According to your complaint, on August 27, 2001, you hand-delivered a written request to the Department for a copy of the administrative policy authorizing reserved parking spaces for favored employees while dismissing requests by physically disabled employees for similar accommodations. As of the date of your complaint, you advised this Office that you had not received a response to your request.

In response to your complaint, Mr. Gettelfinger determined that you had, in fact, delivered two (2) separate, but identical requests for this information to the Department. One of these requests was delivered to Mr. Brian Renner at the State Motor Pool Facility and the other was handed to Ms. Jole' Kelley at the State Office Building Commission.

On August 28, 2001, Mr. Renner apparently contacted you by telephone and advised you that he was preparing a response to your request and later that day you made arrangements to pick up the written response the next day at the Motor Pool Facility. You filed your complaint on August 30th, but apparently had received the written response the day before. Mr. Gettelfinger stated that since you did receive a response by telephone from the Department within twenty-four (24) hours after the requests were received, the Department did not deny you access under the APRA. Since the Department does not have any records that satisfied your request, there was no obligation to advise you of this in writing under the APRA, but the Department did provide one.

## 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. For requests that are delivered by hand, a denial is deemed to have occurred if

- (1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or
- (2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made; whichever occurs first.

Indiana Code §5-14-3-9(a). If twenty-four (24) hours elapse and a requestor does not receive any response, a denial is deemed to have occurred. Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county 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 your requests to the Department on August 27, 2001. You claim that the Department failed to respond to your requests within the twenty-four (24) hours required under the APRA. The information provided by Mr. Gettelfinger, however, appears to contradict your allegations.

The Motor Pool Facility is a division of the Department and Mr. Renner called you within the twenty-four (24) hour period to advise you that he would provide a written response to your request. It appears, therefore, that you did in fact receive a response to your public records requests. Since these requests were identical, it is my opinion that the response by Mr. Renner satisfied the requirement that the public agency respond under Indiana Code section 5-14-3-9(a) within twenty-four (24) hours after a request has been received. It is also my opinion that you were not denied access in violation of the APRA merely because you received only one response to two identical public records requests delivered upon the same

public agency.

## CONCLUSION

It is my opinion that the Department of Administration did respond in a timely manner under Indiana Code section 5-14-3-9(a) to your public records requests of August 27, 2001. Consequently, I find that there was no violation of the Access to Public Records Act.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Dan Gettelfinger, IDOA html>