

December 5, 2001

Mr. Michael J. Mullen  
3690 Hogans Run Road  
Columbus, OH 43221

Re: *Advisory Opinion 01-FC-74*;

Alleged Denial of Access to Public Records by the Ball State University Police Department.

Dear Mr. Mullen:

This is in response to your formal complaint, which was received on November 16, 2001. You have alleged that the Ball State University Police Department, ("Department,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a written request for copies of public records and did not receive a response from the Department. Mr. Joseph G. Wehner, Director of 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 was required to respond to your request within seven (7) days of receiving your public records request and the failure to do so constituted a denial that is actionable under the APRA.

### BACKGROUND

According to your complaint, on October 27, 2001, you sent via facsimile and U.S. Mail a request for copies of public records to the Department. As of the date you signed your complaint, November 8th, you had not received any response to your request. You claim that this was denial of access under the APRA because the Department failed to provide a response to you within seven (7) days.

In response to your complaint, Director Wehner stated that the Department received your request for public records on or about October 30, 2001. The request concerned a large volume of information, covering a period of over 21 years. The Department did reply to your request in a letter dated November 12, 2001 as soon as they had sufficient information to make an accurate response. Director Wehner acknowledged that the Department's response was technically due within seven (7) days of their receipt of your request, but they do not believe you were harmed by this delay.

### 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 facsimile or mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request 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).

It is my opinion that the Department failed to respond to your October 27th request within seven (7) days after receiving it and that this failure to respond constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). While it does not change my opinion in this matter, the Department was working on such a response to you as is evidenced by their letter to you dated November 12, 2001 albeit a few days late under the APRA.

## CONCLUSION

It is my opinion that the Ball State University Police Department denied you access to public records when the Department failed to provide a response to your written request for access to public records within seven (7) days of its receipt. This denial is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Director Wehner, BSU Police Department

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<sup>1</sup> In a letter dated November 26, 2001, you stated that you never received Mr. Braun's telephone message but that you "have no doubt that [Mr. Braun] left a message on my voice mail, but it was never

received."