

February 8, 2002

Mr. Steve Kepley
9177 Stated Rd 64
Georgetown, IN 47122

Re: *Advisory Opinion 02-FC-03*;

Alleged Denial of Access to Public Records by the Family and Social Services Administration.

Dear Mr. Kepley:

This is in response to your formal complaint, which was received on January 11, 2002. You have alleged that the Family and Social Services Administration ("FSSA") violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you claim that you requested access to several items from the FSSA and did not receive a response to your request. Ms. Elizabeth Brown, Deputy General Counsel for FSSA, responded in writing to your complaint and a copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the FSSA's failure to respond to your request within seven (7) days after it was received was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint on December 19, 2001, you sent a written request to Ms. Brown for copies of several documents. You sent this request by certified mail, which was signed for in the FSSA mailroom on December 27th. You filed your formal complaint with this Office on January 11, 2002 because more than seven (7) days passed and you had not received a response the FSSA.

In response to your complaint, Ms. Brown admitted that the FSSA received your written request on December 27, 2001. She also stated that the Office of General Counsel for FSSA did not receive the request until January 2, 2002. Ms. Brown stated that she responded to your letter on January 8, 2002 which was within seven (7) days of her receiving the request.

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. 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 FSSA 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 FSSA 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 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 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 mailed your request to the FSSA and did not receive a response to your request within the seven (7) days after the FSSA received it. In her response Ms. Brown asserts that she responded within seven (7) days of the Office of General Counsel for FSSA receiving the request. It is my opinion, however, that the time for response begins when anyone in the FSSA receives the request. Therefore, it is my opinion that the seven (7) days began to run when someone in the mailroom signed for the letter and that Ms. Brown's response was beyond the seven (7) time period for response.

CONCLUSION

It is my opinion that the Family and Social Service's Administration's failure to respond to your written request for access to public records within seven (7) days after it was received was a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Sandra K. Barger
Staff Attorney

cc: Ms. Elizabeth Brown, Depute General Counsel
Family and Social Services Administration
