

April 5, 2002

Mr. Archie D. Johnson
P.O. Box 916
Nashville, IN 47448

Re: *Advisory Opinion 02-FC-12*;

Alleged Denial of Access to Public Records by the Brown County Area Plan Commission.

Dear Mr. Johnson:

This is written in response to your formal complaint, which was received on April 2, 2002.¹ You have alleged that the Brown County Area Plan Commission ("Commission") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that on March 28, 2002 you requested copies of the audiotapes of two of the Board of Zoning Appeals' meetings and, as of the date of your complaint², you had not received the copies. Ms. Joan Wright, Director of the Commission, responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Commission did not deny you access to public records in violation of the APRA.

BACKGROUND

According to your complaint, on March 28, 2002, you requested copies of the audiotapes of the Brown County Board of Zoning Appeals meetings for February and March 2002 because you needed them to proceed with an appeal, which must be filed within thirty (30) days of the decision. You stated that the request was made in person. As of the date of your complaint, April 2, 2002, you had not received the requested copies.

In her response, Ms. Wright stated that on March 28th your son visited the Commission Office and verbally requested copies of the tapes of the February and March 2002 meetings of the Board of Zoning Appeals. The Office Manager told him at that time that the copies would be prepared. Since the APRA does not require production of public records within a specific time frame, only a response from the public agency, Ms. Wright has stated that she believes that the requirements of the APRA were met. Your son was informed upon request that the copies would be provided and that met the twenty-four (24) hour time period set forth in the APRA. Apparently, the meetings last several hours, so it takes the same number of hours to copy them. The day following your request was Friday March 29th, a county holiday, and consequently, the tapes were not completed until the morning of April 2³, 2002, three working days after your request was received by the Commission.

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. The Commission 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 Commission 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). The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1.

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 made in person, 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, your son made a verbal request on your behalf in the Commission's office on March 28, 2002. You claim that the Commission's failure to produce the requested audiotapes as of the filing of your formal complaint on April 2nd constituted a denial under the APRA. As noted in the previous paragraph, however, there is no time frame for production under the APRA, merely for providing a response. In this case, the Commission's Office Manager did respond by informing your son that the copies would be provided to you. It is my opinion, therefore, that the Commission did not deny you access in violation of the APRA.

With respect to the time for production under the circumstances, it is my position that public agencies must produce public records within a reasonable time period given the nature of the request. When I contacted Ms. Wright about your complaint the morning of April 2nd, she informed me at that time that the Commission had already made the copies you requested and that with the holiday had been able to do so within three (3) working days of your request. Based upon the facts provided, this time frame for production appears to have been reasonable under the circumstances.

CONCLUSION

It is my opinion that the Brown County Area Plan Commission did not deny you access to public records in violation of the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Joan P. Wright, BCAPC w/o enclosure

¹ You requested priority status for your complaint under IC 5-14-5-10 and 62 IAC 1-1-3 and it is my opinion that this was appropriate under 62 IAC 1-1-3(3), and therefore this Opinion is being issued within seven (7) days of the receipt of your complaint.

² Your complaint was received via facsimile by this Office on April 2, 2002.

³ In Ms. Wright's letter, she states that this date was April 3rd, but according to my phone conversation with her on April 2nd, she indicated the tapes had been prepared and were waiting for you to pick up.