

July 24, 2002

Mr. Mark Rutherford, Attorney
Libertarian Party of Bartholomew County, Indiana
156 East Market Street, Suite 600
Indianapolis, IN 46204

Re: Advisory Opinion 02-FC-31; Alleged Denial of Access to Public Records by the Edinburgh Police Department.

Dear Mr. Rutherford:

This is in response to your formal complaint, which was received on July 19, 2002. You have alleged that the Edinburgh Police Department ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you requested copies of public records related to citations issued for operating a vehicle without wearing a seat belt restraint from the Department and did not receive a response to your request. Chief Pat Pankey 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's failure to respond to your written request within seven (7) days after it was received was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, on June 27, 2002, you sent via certified mail to the Department a request for copies of public records relating to citations issued for violations of Indiana Code section 9-19-10-2, operating a vehicle without wearing a seatbelt restraint. You asked for the names, addresses, dates of citation and places of citation for every person issued such a citation by the Department between the dates of May 19 and June 2, 2002. The certified mail return receipt indicates that the Department received your request on June 28, 2002. You filed your formal complaint because more than seven (7) days had passed and you had not received any response from the Department.

In response to your complaint, Chief Pankey did not dispute the fact that the Department received your request. He stated that since the Department had no citations issued during the time period you requested for violations of Indiana Code section 9-19-10-2, there were no records to provide to you. As a result, no one from the Department responded to your 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 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 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).

According to your complaint, you mailed your request to the Department and did not receive a response. It is my opinion that under the APRA, this failure to respond to your request constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). According to the Department, the reason you did not receive a response is because they had no records responsive to your request. It is my opinion, however, that under the APRA you should have received a response to your request, even if it were simply a telephone call to state that the Department had no public records to provide to you.

CONCLUSION

It is my opinion that the Edinburgh Police Department'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,

Anne Mullin O'Connor

Enclosure cc: Chief Pat Pankey, EPD