

August 21, 2002

Ms. Judith C. Sapp
1104 Sportsman Drive
Jeffersonville, IN 47130

Re: Advisory Opinion 02-FC-33; Alleged Denial of Access to Public Records by the City of Jeffersonville.

Dear Ms. Sapp:

This is in response to your formal complaint, which was received on July 25, 2002. You have alleged that the City of Jeffersonville Department of Law ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that the Department failed to produce to you a copy of a consent decree entered into by the City with the US Department of Justice to resolve a 1992 ADA complaint. Ms. Anne Marie Galligan, City Attorney, 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 Department did not violate the APRA with respect to your public records request.

BACKGROUND

According to your complaint, you hand-delivered a written request for a copy of the US Department of Justice ruling against the City of Jeffersonville regarding a complaint filed in 1992 by Mr. Russell Goode. On that same day, Sharon, who works for the Department, contacted you to advise that they did not have the record you requested. You explained to Sharon that the US Department of Justice had advised you that these records should have been kept along with other documentation in this matter. Sharon then told you that the Department could not be expected to keep every document received and that if you wanted a copy, you should contact the US Department of Justice.

In response to your complaint, Ms. Galligan confirmed that her Department does not have a copy of the Consent Decree entered into between the US Department of Justice and the City to resolve Mr. Goode's 1992 complaint. She explained that there are a number of explanations for this, including the fact that the Department did not exist in 1992 and the only documents she received from the previous city attorney were litigation files. Further, the City's ADA coordinator had changed several times since Mr. Goode's case was resolved and the current coordinator does not have the document you requested either. Ms. Galligan also stated that since you filed your formal complaint, she has and is continuing to make efforts to reach the US Department of Justice in order to locate a copy of the consent decree the City entered into with Mr. Goode for you.

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 hand-delivered, a denial is deemed to have occurred if twenty-four (24) hours 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 did receive a response from the Department the same day that you delivered your request. That response was not a denial because the Department had no documents responsive to your request. The APRA only applies to public records that are maintained by public agencies so the failure of the Department to produce a document that is not maintained is not a violation of the APRA. For these reasons, it is my opinion that you were not denied access to public records by the Department in violation of the APRA.

As noted in your complaint, it is your understanding from communications with the US Department of Justice that the Consent Decree is supposed to be maintained by the City of Jeffersonville. You may be correct, but the APRA only applies to records actually maintained by the Department. It is important to note, however, that Ms. Galligan, is making efforts to obtain a copy of the Consent Decree for you through the Department of Justice.

CONCLUSION

It is my opinion that the City of Jeffersonville Department of Law did not deny you access in violation of the APRA with respect to your July 22, 2002 public records request because the record you requested is not maintained by the Department.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Anne Marie Galligan, City Attorney