

December 12, 2002

Mr. Larriante J. Sumbry
#965137 C-455
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-62*; Alleged Denial of Access to Public Records by the Lake Superior Court No. 6.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on November 13, 2002. You have alleged that the Lake Superior Court No. 6 ("Court") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Court denied you access to public records by failing to respond to your October 30, 2002 request. The Honorable John Pera, Judge of the Court, was contacted about your complaint and responded verbally to it. For the reasons set forth below, it is my opinion that the Court did not respond to you within the time period required under Indiana Code section 5-14-3-9(b) and that this failure to respond constituted a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you sent a request to the Court dated October 30, 2002. You asked for a variety of documents, including the names of all the Civil Division judges and chief public defender and a pro-se manual, among other things. You addressed your request to Judge Pera. You had not received a response as of November 8, 2002, so you filed your formal complaint with this Office.

In response to your complaint, Judge Pera stated that he did receive your request and the he did not respond. Judge Pera stated that you have a case pending in his court and therefore, he thought a response to your request may compromise his fairness and impartiality in that matter.

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 Court 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 Court 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. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail 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 the information provided, the Court did receive your request, but failed to respond within the seven (7) day period after receiving that request. Judge Pera's reluctance to respond to your request is due to your pending litigation in his court. There is nothing in the APRA nor in any case law that addresses this situation. For this reason, it is my opinion that the Court did deny you access in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(b).

CONCLUSION

It is my opinion that the Lake Superior Court No. 6 did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that this constituted a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable John Pera, Judge
