

December 11, 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-64*; Alleged Denial of Access to Public Records by the Lake County Board of Elections and Registration.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on November 14, 2002. You have alleged that the Lake County Board of Elections and Registration ("Lake County Election Board") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Lake County Election Board denied you access to public records by failing to respond to your November 4, 2002 request. Mr. Justin Murphy, Attorney for the Board, responded in writing to your complaint. A copy of his response is enclosed. For the reasons set forth below, it is my opinion that the Lake County Election Board 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 Lake County Election Board dated November 4, 2002. You asked for a variety of documents, including names and addresses of state and federal officials elected on May 7 and November 5, 2002, among other things. You addressed your request to Board Chairman Roger Chaibi. You had not received a response as of November 12, 2002, so you filed your formal complaint with this Office.

In response to your complaint, Mr. Murphy addressed each of the items you requested in your November 4th letter to the Lake County Election Board. Apparently, the request was received on Election Day, November 5, 2002, but it was not logged in with other such requests as is the usual process. As a result, your request was not in the proper place and the Lake County Election Board did not respond within seven (7) days of receiving it.

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 Lake County Election Board 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 Lake County Election Board 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 Lake County Election Board did receive your request, but failed to respond within the seven (7) day period after receiving that request. For this reason, it is my opinion that the Lake County Election Board did deny you access in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(b). While this does not alter my opinion, the Lake County Election Board has now provided a response to your November 4th request.

CONCLUSION

It is my opinion that the Lake County Board of Elections and Registration 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: Mr. Justin Murphy w/o enclosure
