

November 26, 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-66*; ; Alleged Denial of Access to Public Records by the Gary Police Department.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on November 25, 2002. You have alleged that the Gary Police Department ("Department") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Department denied you access to public records by failing to respond to your November 12, 2002 request. Sergeant Larry Dye 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 did fail to respond to your request within the time frame provided at Indiana Code section 5-14-3-9(b) and that this constituted a denial that is actionable under the APRA.

## BACKGROUND

According to your complaint, on November 12, 2002 you sent a public records request to the Department asking for copies of various public records related to Case number 45G03-9804-CF-34. When you did not receive a response from the Department, you filed your formal complaint with this Office dated November 20, 2002.

In response to your complaint, Sergeant Dye acknowledged that the Department received your request. The Department had not responded to your request as of the date this Office contacted Sergeant Dye, which was November 25, 2002.

## 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. 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 Department did receive your public records request, but failed to respond within the seven (7) day period after receiving that request. For this reason, it is my opinion that the Department 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 Department has now provided a response to your November 12th request.

### CONCLUSION

It is my opinion that the Gary Police Department 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: Sgt. Larry Dye, GPD w/o enclosure

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