

January 22, 2003

Mr. Martin L. Hensley  
15 Wood Street  
Greenfield, IN 46140

Re: *Advisory Opinion 03-FC-2*; Alleged Denial of Access to Public Records by the Rush County Area Plan Commission.

Dear Mr. Hensley:

This is written in response to your formal complaint, which was received on January 17, 2003. <sup>1</sup> You have alleged that the Rush County Area Plan Commission ("Commission") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that on January 16, 2003 you requested access to various public records from the Commission and that you were denied access to them. Mr. William Todd, Executive Director of the Commission, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Commission did not deny you access to public records in violation of the APRA.

## BACKGROUND

According to your complaint, on January 16, 2003 you visited that Commission office and requested access to specific documents related to the construction of towers in that county. You state that Mr. Todd raised his voice and told you that he would mail you copies of any public records that you wanted and he asked that you leave his office. You indicate that, based on past experience, the secretary for the Commission has been directed not to provide any document to you unless Mr. Todd first approved that inspection. It is your position that on that day, Mr. Todd was not willing to allow you to inspect the public records you wanted to access. You advised Mr. Todd at that time that you knew some of the older public records would take time, but that you knew where the others were located and that you could direct him to them. Mr. Todd responded that he was not set up to provide documents on demand and asked you to write a list of what you wanted and to leave the Commission office. You asked again to see the readily available documents at that time, but indicate that Mr. Todd refused this request. At that time, Mr. Todd directed the secretary to call the Rush County Sheriff's Department, several officers arrived as you were completing your written request and asked you to leave the office. Apparently, Mr. Todd left at some point and you claim that he did not respond to your request for documents or assistance and in fact, denied you access under the APRA. You then filed your formal complaint with this Office and it was received the morning of January 17, 2003.

In his response, Mr. Todd stated that on January 13, 2003, you filed a written notice of your intent to file suit against the County with the County Commissioners at their public meeting. A copy of that correspondence was filed with Mr. Todd's response. On January 14, 2003, Mr. Todd mailed you a letter advising you that he could not issue a construction permit to you without a special exception approved by the Board of Zoning Appeals.

On January 16th, at approximately 3:25 p.m., you arrived at the Commission office and demanded to see the files of all communication towers given permission to construct in Rush County since 1999. Mr. Todd indicated that he advised the secretary to get your request in writing and that he would locate the information and mail it to you. Apparently you asked to inspect these records before making copies, so Mr. Todd advised you personally that they would gather the information and contact you for this purpose. Mr. Todd indicated that he had an appointment and that you should leave and that you would be contacted when the public records were ready for your inspection. You apparently asked to look through their files yourself and Mr. Todd advised you that he would not permit that.

Mr. Todd stated that you again refused to leave at his request and he then asked the secretary to call the Rush County Sheriff's Department for assistance. You were given a pen and piece of paper and you wrote down your request. Shortly after the officers arrived, Mr. Todd asked you to leave again, and you allegedly refused again. Mr. Todd left for his appointment and the officers apparently stayed in the Commission office until you left. It is Mr. Todd's position that he did not deny you access under the APRA since public agencies have a reasonable time to produce public records, and especially since you had asked for public records that dated back three or four years. At the time of his response, which was dated January 17th, Mr. Todd stated that numerous records had been located and that within 48 to 72 hours after your request, the public records would be available to you. Mr. Todd indicated that since you have already advised the County in writing that you intend to sue over this issue, he wanted to be sure to make a thorough search of the Commission's files.

#### 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. The Commission 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 Commission 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). The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1.

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 made in person, a denial is deemed to have occurred if

- (1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or
- (2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made; whichever occurs first.

Indiana Code §5-14-3-9(a). If twenty-four (24) hours elapse and a requestor does not receive any response, a denial is deemed to have occurred. Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county 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 appeared at the Commission office on January 16th and made your request, first verbally, then in writing. Under the APRA, the public agency has twenty-four (24) hours to respond to your request, either denying access or indicating that you would be provided public records. At the time you visited the Commission Office, it does not appear that you were denied access to the public records, only that you were denied the opportunity to inspect some of them on demand. The APRA does not provide a requestor with immediate access to public records, but certainly there are times when public agencies may be able to do so. The public agency, not the requestor, has the ability under Indiana Code section 5-14-3-7(a) to regulate access to their public records. Also, from your complaint and Mr. Todd's response, Mr. Todd did not deny you access, but rather told you that if you wrote down the public records you wanted to access, he would gather them for your inspection and contact you. In fact, when I contacted Mr. Todd to notify him of your complaint, he indicated that they had already pulled some of the public records you requested. This fact supports the notion that you were not denied access to the public records, just not provided immediate access as you would have preferred. For these reasons, it is my opinion that you were not denied access to public records under the APRA.

With respect to the alleged hostility you encountered from Mr. Todd when you made your request, the APRA does not address this. I understand your frustration with this and can only recommend that if you wish to complain about the incident you should probably make that complaint to Mr. Todd's supervisor.

## CONCLUSION

It is my opinion that the Rush County Area Plan Commission did not deny you access to public records in violation of the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. William Todd, RCAPC w/o enclosure

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<sup>1</sup> You requested priority status for your complaint under IC 5-14-5-10 and 62 IAC 1-1-3 and it is my opinion that this was appropriate under 62 IAC 1-1-3(3), and therefore this Opinion is being issued within seven (7) days of the receipt of your complaint.