

February 28, 2003

Mr. Donald D. Levenhagen
One Indiana Square, Suite 1400
Indianapolis, IN 46204

Re: *Advisory Opinion 03-FC-6*; Alleged Denial of Access to Public Records by the Indiana Gaming Commission.

Dear Mr. Levenhagen:

This is written in response to your formal complaint, which was received on February 18, 2003. You have alleged that the Indiana Gaming Commission ("Commission") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a public records request to the Department, which was dated February 5th, but that you did not receive a response to your request. Ms. Jennifer Arnold, Director of External Affairs for the Commission, 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 Commission's failure to respond to your written request within seven (7) days after it was received was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you sent ¹ a request to the Commission to inspect and copy public records pertaining to Belterra Casino, including any filings or reports received by the Commission during the past three (3) years. You also requested access to the meeting minutes for the Commission for the past two (2) years. When you had not received a response from the Commission, you filed your formal complaint with this Office on February 18, 2003.

In response to your complaint, Ms. Arnold admitted that the Commission did receive your request on February 6th, and sent a written response to you on February 17, 2003, one day prior to receiving a copy of the formal complaint you filed with this Office. She stated that the Commission is aware that a response was not timely under the APRA, but that this was inadvertent and due to limited staff. Ms. Arnold stated that since she received the complaint she spoke to you about your request and that you were scheduled to visit the Commission's offices today to review public records.

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 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).

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 delivered by mail, a denial is deemed to have occurred if seven (7) days 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 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 sent your request to the Commission on February 5th and did not receive a response to your request within seven (7) days after the Department would have received it. It is my opinion that under the APRA, this failure to respond to your request constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). While this does not alter my opinion in this matter, it is important to note that the Commission did respond to your February 5th request prior to receiving the formal complaint filed with this Office. It appears that you have now been or are being provided access to the public records of that agency.

CONCLUSION

It is my opinion that the Indiana Gaming Commission's failure to respond to your written request for access to public records within seven (7) days after it was received was a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Jennifer Arnold, IGC

¹ While it was not specifically stated in your request, it appears that your request was sent via U.S. Mail. This Opinion has been written under the assumption that this was the method of delivery.