

March 19, 2003

Mr. Phil S. Herman
53199 Oakmont West Drive
South Bend, IN 46637-3536

Re: *Advisory Opinion 03-FC-9*; ; Alleged Denial of Access to Public Records by LaPorte County
Community Corrections.

Dear Mr. Herman:

This is written in response to your formal complaint, which was received on February 27, 2003. You have alleged that the LaPorte County Community Corrections Office ("Community Corrections") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Community Corrections denied you access to public records by failing to respond to your January 25 and February 4, 2003 requests. Ms. Judy Cunningham of Community Corrections responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that Community Corrections 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, on January 25, 2003 you sent a request for access to the public records of Community Corrections to the attention of Mr. Joe Frye, Director. Delivery of this request was confirmed by the United States Postal Service on January 27th. When you did not receive a response within seven (7) days, you sent an identical request to Community Corrections, which was dated February 4, 2003. You also contacted this Office on an informal basis in early February, but chose not to file a formal complaint at that time. When you received no response from Community Corrections to your two written requests for access to public records, you filed your formal complaint with this Office.

In response to your complaint, Ms. Cunningham stated that she did attempt to contact you by telephone, but that was apparently after she received a call from this Office in early February. She stated that they were unaware that they only had seven (7) days to respond to you. She stated that she did send you a letter dated March 3, 2003 advising you how you could access the available records of Community Corrections.

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.

Community Corrections 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 Community Corrections 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, Community Corrections did receive your requests, but failed to respond within the seven (7) day period after receiving either request. For this reason, it is my opinion that Community Corrections 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 it does not alter my opinion concerning the timeliness of Community Corrections' response to your two public records requests, Ms. Cunningham has now responded to those requests.

CONCLUSION

It is my opinion that LaPorte County Community Corrections did not respond to your requests for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that these failures constituted denials that are actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Judy Cunningham, LCCC