

March 12, 2003

Mr. Kent H. Hopper
5461 Steven Drive
Greenwood, IN 46142

Re: *Advisory Opinion 03-FC-13*; Alleged Denial of Access to Public Records by the Johnson County Department of Planning and Zoning.

Dear Mr. Hopper:

This is in response to your formal complaint, which was received on March 5, 2003. You have alleged that the Johnson County Department of Planning and Zoning, ("Department") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that the Department failed to respond to your February 17, 2003 request for access to public records. Mr. David Hirschle, Director of Planning for the Department, 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, based upon the information provided, the Department did not respond to you in a timely manner under the APRA with respect to your February 17, 2003 request.

BACKGROUND

According to your complaint, you sent a request for copies of public records related to a proposed change in zoning by certified mail to the Department on February 17, 2003. The certified mail receipt indicates that someone signed for the letter, which was addressed to Mr. Hirschle on February 19th. You state that Mr. Hirschle ignored your request by failing to respond to it. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Hirschle stated that the Department does not deny access to public records. He said that your request was received in the Office of the Johnson County Commissioners on February 19th and then forwarded to the Department. Mr. Hirschle apparently wrote a letter to you dated February 22nd, advising you that there were a number of documents responsive to your request and that you would be permitted the opportunity to come in and make copies at their offices. This letter was apparently mailed to you that same day via regular mail. Before issuing this Opinion, I requested a copy of this February 22nd letter from Mr. Hirschle but was unable to reach him. You confirmed by email

message on March 11th, however, that you never received anything from Mr. Hirschle.

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 Court 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 Court 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 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. 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(a). 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 your complaint, you sent your February 17th request by certified mail to Mr. Hirschle at the Department. The request was received on February 19th and, therefore, the Department's response should have been provided within seven (7) days, or February 26, 2003. You have not yet received the letter, which clearly indicates that either there was no letter or there was a problem with delivery. Since I have not been provided a copy of the February 22nd letter, based upon the information before me, it is my opinion that the Department failed to respond to your request within the time stated in the APRA and that this denial is actionable under Indiana Code section 5-14-3-9. The Department, in its response to your formal complaint, however, has indicated that the public records you requested are available for your review and copying in the Department's Offices

CONCLUSION

It is my opinion that, based upon the information provided to me, the Johnson County Department of Planning and Zoning did not respond in a timely manner as to your request dated February 17, 2003 under Indiana Code section 5-14-3-9(b)

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. David Hirschle, Director of Planning