

April 10, 2003

Larriante J. Sumbry
#965137 A-257
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 03-FC-18*; Alleged Denial of Access to Public Records by the Lake Superior Court, Civil Division.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on March 24, 2003. You have alleged that the Lake Superior Court, Civil Division ("Civil Division") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Civil Division denied you access to public records by failing to respond to your March 3, 2003 request. The Honorable Diane Kavadias Schneider, Judge of the Civil Division, 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 the Civil Division 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, you sent a request to the Civil Division dated March 3, 2003. You asked for a variety of documents, including copies of complaints filed, a list of names of court staff persons, addresses, annual reports, and various manuals. You had not received a response as of March 18, 2003 so you filed your formal complaint with this Office.

In response to your complaint, Judge Schneider explained that none of the records you requested are in the possession of the Civil Division. Court files are maintained by the clerk, she is not required to provide a list of the names of her staff, the NAACP telephone number or copies of legal manuals that she does not have. Judge Schneider indicated that she informed you that she has a conflict in providing any assistance to you because her husband is the chief public defender. This is apparently why you received no response to your request.

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 Civil Division 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 Civil Division 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 Civil Division did receive your request, but failed to respond within the seven (7) day period after receiving that request. For this reason, it is my opinion that the Civil Division 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 the Civil Division's response to your March 3rd request, Judge Schneider does not have any of the records you requested nor was she obligated to create any new records to respond to your request. I also understand Judge Schneider's concern about any conflict of interest in providing you with assistance. The APRA, however, does require a public agency to respond to a request, even if the answer is that the agency does not have any of the records requested. In the future, Judge Schneider may want to ask the clerk to respond to any future requests you may have in order to avoid any possible conflicts.

CONCLUSION

It is my opinion that the Lake Superior Court, Civil Division 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: The Honorable Diane Kavadias Schneider, Judge