

June 2, 2003

Ms. Juanita Waugh
c/o Mr. John R. Gambbs, Esq.
P.O. Box 1608
Lafayette, IN 47902

Re: *Advisory Opinion 03-FC-33: Alleged Denial of Access to Public Records by the White County Area Plan Commission.*

Dear Ms. Waugh:

This is written in response to your formal complaint, which was received on May 8, 2003. You have alleged that the White County Area Plan 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 April 16, 2003 [1](#), but that you did not receive a response to your request. Mr. Jerry Altman, Attorney for the Commission, 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 since the Commission never received your written request of April 16th, they did not deny you access in violation of the APRA..

BACKGROUND

According to your complaint, you are currently involved in litigation with the Commission. You sent a public records request to the Commission, in care of Mr. Altman, on April 16, 2003² asking for copies of the following documents:

1. All documents evidencing plaintiff's complete file as it pertains to the defendant and the real property that is subject of the plaintiff's Complaint.
2. All documents which contain and statements, notes, reports or memoranda of any person(s) who witnessed or claims to have witnessed and/or has knowledge or claims to have knowledge of or relating to the ordinance and code violations alleged in Plaintiff's Complaint.

You did not receive a response to this request. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Altman stated that he never received your April 16th request.

He also stated that if he had received your request, he would have answered that the only exception that would be claimed by the Commission is for any records that constitute attorney work product. See, Indiana Code section 5-14-3-4(b)(2).

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 mailed your request to the Commission, in care of Mr. Altman, and did not receive a response to your request within seven (7) days after the Commission received it. Mr. Altman responded that he never received the April 16th request.³ For this reason, it is my opinion that under the APRA, the Commission did not deny you access in violation of the APRA since your request was never received. It appears that Mr. Altman, however, has now responded to your request by stating that the Commission has produced all the public records responsive to your request in response to your discovery requests in the litigation except for the information deemed nondisclosable by the attorney work product exception.

CONCLUSION

It is my opinion that the White County Area Plan Commission did not deny you access to public records with respect to your April 16, 2003 request because the Commission never received your request.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Jerry Altman, Attorney w/o enclosures
White County APC

[1](#) You also complained about an identical request dated February 12, 2003. Under Indiana Code section 5-14-5-7, a formal complaint must be filed within thirty (30) days of the alleged denial in order to be the subject of an advisory opinion. For this reason, my Opinion only addresses the April 16th request.

[2](#) It is unclear why you did not send this request directly to the public agency as is contemplated under the APRA. I understand there is litigation, but a public records request should not have been affected by that litigation.

[3](#) The address on your April 16th letter has only one error in that you directed the letter to "Constitutional" Plaza and Mr. Altman's letterhead reads "Constitution."
