Mr. Willie H. Hollingsworth
402 Johnson Street
Gary, IN 46402

Re: *Advisory Opinion 03-FC-34:* Alleged Denial of Access to Public Records by the Gary Housing
    Authority.

Dear Mr. Hollingsworth:

This is in response to your formal complaint, which was received on May 13, 2003. You have alleged that the Gary Housing Authority ("Authority") 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 Authority dated April 16, 2003 and that you did not receive a response to your request. Mr. Mark Laterzo, Attorney for the Authority, 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 the Authority'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 mailed a public records request to the Authority April 16, 2003. Since you had received no response from the Authority by May 13th, you filed your formal complaint with this Office.

In response to your complaint, Mr. Laterzo stated that the Authority did receive your request and as a result of an administrative oversight, did not respond to it. Mr. Laterzo stated that the Authority staff has been instructed to compile the public records related to your request and provide them to him for review. He anticipates that he will be able to provide them to you in the very near future.

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 Authority 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 Authority 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 Authority and did not receive a response to your request within seven (7) days after the letter would have been received. 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 Authority will provide you with any documents that are available and responsive to your request.

CONCLUSION

It is my opinion that the Gary Housing Authority'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

Enclosures

cc: Mr. Marc Laterzo, Attorney, GHA w/o enclosure