

April 4, 2001

Mr. Hans L. Markland
58 W. 1000 N.
Wheatfield, IN 46392

Re: *Advisory Opinion 01-FC-20*;

Alleged Denial of Access to Public Records by the Jasper County Health Department.

Dear Mr. Markland:

This is in response to your formal complaint which was received in this Office on March 21, 2001. You have alleged that the Jasper County Health Department ("Health Department") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code section 5-14-3. Specifically, you claim the Health Department violated the APRA by denying you access to septic tank records. Ms. Sandra Parks, Jasper County Sanitarian, responded in writing to your complaint in a letter dated March 26, 2001. A copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Health Department failed to respond to your March 19, 2001 verbal and written requests for access to public records within the twenty-four (24) hour period required under Indiana Code section 5-14-3-9(a). Therefore, the Health Department's denial of access is actionable under the APRA.

BACKGROUND

According to your complaint, on March 19, 2001 at 1:15 p.m. you appeared in person at the office of the Health Department and made a verbal request to inspect septic tank records concerning a neighboring property. Your complaint alleges that Ms. Parks was not in the office and that the person who assisted you did not know how to find the records you requested. Your complaint further alleges you made a written request to inspect the records after your verbal request and that you left your phone number with the Health Department before leaving. Your complaint alleges Ms. Parks had not responded to your requests by 6:45 a.m. on March 21, 2001, the time at which you filed your complaint with this Office.

In response to your complaint, Ms. Parks stated the Health Department did not deny you access to the records because there was no person at the Health Department when you appeared in person qualified to fulfill your request. Ms. Parks expressed a willingness to cooperate with you in the future and to provide you with access to copies of public records available at the Health Department. However, Ms. Parks did not indicate in her response that she attempted to contact you within twenty-four (24)

hours of your verbal and written requests.

ANALYSIS

The public policy of 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 Health 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 to receive photocopies of the public records of the Health Department during regular business hours unless the public records are excepted from disclosure as confidential or are otherwise not disclosable under Indiana Code section 5-14-3-4.

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. When a person makes a verbal request or hand-delivers a written request to a public agency, a denial occurs in one of two ways. First, a denial may occur when the person designated by the public agency as responsible for records release decisions refuses to permit inspection or copying. Ind. Code § 5-14-3-9(a). Second, if twenty-four (24) hours elapse after the agency receives the request and there has been no response, this is also a denial. Id. Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the requested public records. Ind. Code § 5-14-3-9(d).

Under the facts presented, it is my opinion that the Health Department denied you access to the septic tank records with respect to your verbal and written requests of March 19, 2001. A denial of access occurred because the Health Department did not respond within twenty-four (24) hours after the requests were received as required under Indiana Code section 5-14-3-9(a). Ms. Parks' absence from the office on the afternoon of March 19, 2001 does not excuse the Health Department's statutory requirement of a timely response. Therefore, this failure to respond to your request for public records is actionable under Indiana Code section 5-14-3-9(a).

As a final note, this is the second formal complaint you have filed with this Office since January 23, 2001 alleging a denial of access by the Health Department. It is commendable to note that Ms. Parks indicated that she is willing to provide you access to public records, but as the sole employee working with sanitation records, she cannot be in the office at all times. Ms. Parks has outlined a public records request procedure that meets the requirements for response under the APRA. I encourage you to make an effort to work within these procedures for your future requests to the Health Department.

CONCLUSION

It is my opinion that the Jasper County Health Department failed to respond to your March 19, 2001 requests for access to public records within the time specified under Indiana Code section 5-14-3-9 (a) and that this failure to respond constituted a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Sandra Parks, Jasper County Sanitarian
