

December 4, 2001

Mr. Michael J. Mullen  
3690 Hogans Run Road  
Columbus, OH 43221

Re: *Advisory Opinion 01-FC-73*;

Alleged Denial of Access to Public Records by the Indiana Law Enforcement Training Academy.

Dear Mr. Mullen:

This is in response to your formal complaint, which was received on November 15, 2001. You have alleged that the Indiana Law Enforcement Training Academy ("ILEA") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you requested access to public records from the ILEA and did not receive a response to your request. Mr. Charles Braun, Staff Attorney and Records Coordinator for the ILEA, 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 ILEA did attempt to respond to your written request within seven (7) days after it was received and that there was no denial under the APRA.

### BACKGROUND

According to your complaint, on October 28, 2001, you sent a written request to the Deputy Director of the ILEA for copies of several documents. These documents included reports received from the Ball State University Police Department and a complete list of graduates between January 1, 1980 and October 28, 2001, and any correspondence or memoranda between the ILEA and Ball State University Police Department between January 1, 1990 and October 23, 2001. You sent this request by facsimile and U.S. Mail. You filed your formal complaint with this Office on November 15th because more than seven (7) days had passed and you had not received a response from the ILEA.

In response to your complaint, Mr. Braun stated that he did attempt to contact you by telephone<sup>1</sup> on October 31, 2001, within seven (7) days as required under the APRA and left a telephone message for you. The ILEA has been and is prepared to completely comply with your request of October 28th and in a letter to you dated November 21st, Mr. Braun set forth a detailed plan on how that will be accomplished.

### ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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 ILEA 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 ILEA 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 or facsimile, 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 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 faxed and mailed your request to the ILEA and did not receive a response to your request within seven (7) days after the ILEA received it. According to Mr. Braun, and undisputed by you, the ILEA appears to have attempted to provide a response to your request via telephone three (3) days after you faxed your request. Unless a public agency is going to deny a written request for access to public records, the agency need not put its response in writing. Ind. Code §5-14-3-9 (c). It is my opinion that under the APRA, the ILEA did attempt to respond to your request within the time frame required under the APRA. Because you have since agreed that such a telephone message may have been left, but not received by you, it is my opinion that there was no denial of access for failing to respond within the time frame required under the APRA. I would, however, caution the ILEA that for future requests, if a requestor has not responded to a telephone message within a reasonable time period, the ILEA may want to confirm its attempts to reach that person via facsimile or letter.

## CONCLUSION

It is my opinion that the Indiana Law Enforcement Academy did not fail to respond to your October 28, 2001 public records request and therefore, there was no denial of access under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Charles Braun, ILEA

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<sup>1</sup> In a letter dated November 26, 2001, you stated that you never received Mr. Braun's telephone message but that you "have no doubt that [Mr. Braun] left a message on my voice mail, but it was never received."