

June 27, 2003

James R. Stephens
#996056 35-3J
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Re: *Advisory Opinion 03-FC-50*: Alleged Denial of Access to Public Records by the Office of the Auditor of Marion County.

Dear Mr. Stephens:

This is in response to your formal complaint, which was received on June 23, 2003. You have alleged that the Office of the Auditor of Marion County ("Auditor's Office") 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 Auditor's Office June 9, 2003 and that you did not receive a response to your request. Mr. Terry Nelson, Chief Deputy Auditor, 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 it appears that the Auditor's Office did not receive your June 9th request, the failure to respond to you was not a denial under the APRA.

BACKGROUND

According to your complaint, you mailed a public records request to the Auditor's Office on June 9, 2003. Since you had received no response from the Auditor's Office by June 19th , you filed your formal complaint with this Office.

In response to your complaint, Mr. Nelson stated that the Auditor's Office does not have any record of receiving your June 9th request. While staff of the Auditor's Office indicates that a request like yours may have been forwarded to the Marion County Sheriff's Department for response, the letter enclosed from the Sheriff's Department indicates that your request was never received there either. The Sheriff's Department's response appears to respond to each of the items you presented in your June 9th 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 Auditor's Office 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 Auditor's Office 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 Auditor's Office and did not receive a response to your request within seven (7) days after the letter would have been received. The Auditor's Office does not have a record that your request was received. Because your request should have been directed to the Marion County Sheriff's Department, the Auditor's Office did forward it to that agency after receiving your formal complaint, so you now have a response to each of the items you requested. Since the Auditor's Office did not receive your request, however, it is my opinion that the Auditor's Office did not violate the APRA with respect to your request by failing to respond to it within seven (7) days.

CONCLUSION

It is my opinion that the Office of the Marion County Auditor did not violate the APRA with respect to your June 9th request for public records because it appears that the Auditor's Office never received it.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Terry Nelson, Chief Deputy Auditor w/o enclosure