

November 30, 1999

Mr. David A. Gunter
110 West Berry Street, Suite 1100
Fort Wayne, IN 46802-2381

Re: *ADVISORY OPINION No. 99-FC-18:*

Denial of Access to Public Records by the Board of Commissioners of Jennings County and the County Attorney.

Dear Mr. Gunter:

This is in response to your formal complaint, which was received via e-mail on November 4, 1999. You have requested an advisory opinion as to whether the Board of Commissioners of Jennings County, and their attorney, Mr. Alan L. Marshall, (hereinafter collectively referred to as the "County,") violated the Access to Public Records Act (hereinafter, "APRA,") when they failed to respond to your October 15, 1999 written request for a copy of a contract between an architect and the County concerning a new jail project. The County responded, through attorney Alan L. Marshall in a letter dated November 15, 1999 indicating that a copy of the contract had been forwarded to you by facsimile and U.S. Mail. A copy of his response is enclosed for your reference. It is my opinion that the County's failure to respond to your written public records request constituted a denial of access under the APRA.

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 $\text{\textasciixchar"26}$ 5-14-3-1. The County is clearly a public agency for the purposes of the APRA. Ind. Code $\text{\textasciixchar"26}$ 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the County 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 $\text{\textasciixchar"26}$ 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for 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. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced that the records requested are confidential or otherwise nondisclosable, or that the public agency

needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection. A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code α 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 α 5-14-3-9(d).

Under the facts presented, it is clear that the County failed to respond within seven (7) days after receiving your written request for access to a copy of the contract with an architect concerning a new jail project. It is my opinion that the County's failure to respond to your request within the time period specified under Indiana Code section 5-14-3-9(b) constituted a denial under the APRA. The County has since provided you with a copy of the contract as a result of your formal complaint.

CONCLUSION

It is my opinion that the Board of Commissioners of Jennings County and their attorney failed to respond within the time period required under Indiana Code section 5-14-3-9(b) with respect to your public records request of October 15, 1999.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Alan L. Marshall