

June 7, 2001

Mr. Charles J. Troutman
7502 Muirfield Place
Indianapolis, IN 46237

Re: Advisory Opinion 01-FC-32; Alleged Denial of Access to Public Records by the Indiana Department of Correction.

Dear Mr. Troutman:

This is in response to your formal complaint, which was received on May 23, 2001. You have alleged that the Indiana Department of Correction ("Department") 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 Department on May 9th but that you did not receive a response to your request. Mr. C. Thomas Neely, Director of Labor Relations for the Department 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 Department'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, on May 8, 2001, you sent a written request to Mr. Neely for a copy of the Indiana statute or personnel rule that prohibits a state employee who receives workers' compensation benefits from having the check directly deposited into his or her bank account. You sent your request by certified mail and the return receipt indicates the Department received it on May 9, 2001. As of the date of your complaint, you had not received a response to your request.

In response to your complaint, Mr. Neely responded directly to you in a letter dated May 24, 2001. In his letter, Mr. Neely admitted that he did not respond to your request within the time frame required under the APRA. Mr. Neely did add that he is not aware of any state statute or rule that pertains to the direct deposit of workers' compensation checks.

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 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 copy the public records of the Department 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 Department and did not receive a response to your request within seven (7) days after the Department received it. 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 Mr. Neely has now responded to your request and the Department has no records to supply you relative to your request.

CONCLUSION

It is my opinion that the Department of Correction'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

Enclosure

cc: Ms. Pam Pattison, DOC

Mr. C. Thomas Neely, DOC

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