

August 7, 2001

Mr. Donald D. Slayton
#944663 (11B-4C)
P.O. Box 601
Pendleton, IN 46064

Re: Advisory Opinion 01-FC-41; Alleged Denial of Access to Public Records by the Orange Circuit Court.

Dear Mr. Slayton:

This is in response to your formal complaint, which was received on July 30, 2001. You have alleged that the Orange Circuit Court, ("Court,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a written request for copies of various documents from a case file and did not receive any response from the Court. The Honorable Larry R. Blanton, Orange Circuit Court Judge 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 Court was required to respond to your request within seven (7) days of receiving your public records request and the failure to do so constituted a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, on July 2, 2001 you contacted the Court a second time¹ and you requested copies of various documents² from a case file captioned, State v. Kevin McHale. Apparently, this case concerned a "burglary and theft case from January, 1998." You also asked for copies from any case files in which Mr. McHale had been charged with manufacturing methamphetamines.³ The Court received your request on July 9, 2001, according to the certified mail return receipt. As of the date you filed your complaint, you had received no response from the Court.

In response to your complaint, Judge Blanton provided this Office with a copy of his correspondence to you, dated July 30, 2001. He had instructed his staff to provide the requested copies to you, but stated that without an order of indigency, any public agency could require you to provide payment for the copies and mailing cost of your public records request before providing the copies to you.

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 Court 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 Court 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 which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

It is my opinion that the Court failed to respond to your July 2nd request within seven (7) days after receiving it and that this failure to respond constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). While it does not change my opinion in this matter, the Court, since receiving your formal complaint, has now provided you with the information you requested.

In his response to your complaint, Judge Blanton also raised an important issue about public records requests. While there is a duty to respond to your requests under the APRA, a public agency is not required to provide photocopies at no charge unless there is a statute requiring a waiver of fees or a court has ordered a person indigent for this purpose. *See Opinion of the Public Access Counselor, 00-FC-29, Issued 8/21/00*. It is my position that a public agency should inform a requestor of the requirement of any fees to be paid in advance and that this could have been included in the response that was required under Indiana Code section 5-14-3-9(b).

CONCLUSION

It is my opinion that the Orange Circuit Court denied you access to public records when the Court failed to provide a response to your written request for access to public records within seven (7) days of its receipt. This denial is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable Larry R. Blanton, Judge

¹Your first request was dated May 25, 2001.

²You asked for copies of the plea bargain, sentencing abstract, probation agreement, drug screen results, outstanding warrant (if any), docket sheet from the burglary/theft file. You asked for prob. Affidavit and charging information, warrant for arrest or incarceration date from any cases concerning the manufacture of methamphetamines.

³You asked for prob. Affidavit and charging information, warrant for arrest or incarceration date from any cases concerning the manufacture of methamphetamines.

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