

October 30, 2001

Mr. Brent E. Nelson  
1346 N. Delaware Street  
Indianapolis, IN 46202

Re: *Advisory Opinion 01-FC-67*;

Alleged Denial of Access to Public Records by the Indiana Department of Environmental Management.

Dear Mr. Nelson:

This is written in response to your formal complaint, which was received on October 15, 2001. You have alleged that the Indiana Department of Environmental Management ("IDEM") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the IDEM failed to respond to your request for public records, which was dated October 2, 2001. Ms. Michelle Reeves, Attorney for the IDEM, responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the IDEM did not respond to your October 2, 2001 request for access to public records in a timely manner under Indiana Code section 5-14-3-9(b) and that this denial is actionable in court under the APRA.

### BACKGROUND

According to your complaint, in a letter dated October 2, 2001, you requested copies of e-mail messages for Angelo Datillo that had been referenced in an August 30th letter from Ms. Reeves to this Office. You also revised a previous request to the IDEM for copies of any e-mail records that discuss or relate to the Shelly Ditch for ten (10) employees of the IDEM. Your request was sent via certified mail and the return receipt indicated that someone at the IDEM signed for it on October 4, 2001.<sup>1</sup> You alleged that as of the date of your formal complaint, October 15th, you had received no response from the IDEM.

In her response, Ms. Reeves stated that your request was delivered to the Office of Water Management, but that she did not personally receive your request October 5, 2001. Ms. Reeves then sent you a response on October 12th. Accordingly, it is her position that she did respond within seven (7) days of receiving your request. Ms. Reeves further stated that the IDEM has complied with your previous public records requests and will continue to do so, as they are with respect to your October 2, 2001 public records 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. The IDEM 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 IDEM 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 public records within a specified time period. 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 § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of 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).

Under the facts presented, it appears that the IDEM did receive your public records request on October 4th, but that the addressee did not receive it until October 5th. Ms. Reeves did send a response, as is required under the APRA within seven (7) days after she had received your request. This was, however, eight (8) days after the public agency received your request and the APRA refers to a public agency's receipt of a request, not the addressee.<sup>2</sup> It is my opinion that this failure to respond within seven (7) days was a denial under Indiana Code section 5-14-3-9(b) that is actionable in court as noted above. It is important to note, however, that you did receive a response from Ms. Reeves concerning your October 2nd request for public records and the IDEM is continuing to work on producing disclosable public records to you.

## CONCLUSION

It is my opinion that the Indiana Department of Environmental Management did not respond to your October 2, 2001 request for access to public records in a timely manner under Indiana Code section 5-14-3-9(b). This denial is actionable in court under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Michelle Reeves, IDEM

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<sup>1</sup> The copy of the return receipt you provided with your complaint appears only to have initials of the person who signed, so it is not clear to me who actually signed for the letter.

<sup>2</sup> Since you sent your letter via certified mail, and it was addressed to Ms. Reeves specifically, I am unsure why someone from another office within the IDEM signed for it. It appears that had Ms. Reeves or her own office originally received your certified letter, the response may have met the timeliness requirements of Indiana Code