

November 19, 1999

Ms. Charlotte D. Hammond  
1318 S. 1075 E.  
Akron, IN 46910

Re: Advisory Opinion 99-FC-12;  
Denial of Access by the Akron Advisory Plan Commission.

Dear Ms. Hammond:

This is in response to your formal complaint<sup>1</sup>, which was received October 25, 1999. You have asked whether the denial of access to certain documents by the Akron Advisory Plan Commission (hereinafter "Commission,") violated the Indiana Access to Public Records Act (hereinafter "APRA.") The Commission responded that they did not have copies of the documents and you want to know whether this is an appropriate response. The Commission responded to your complaint through its attorney, Mr. Wayne Steele, in a letter dated November 2, 1999. For the reasons stated below, it is my opinion that, if the Commission did not understand your request for copies of Exhibits E and J from a lawsuit filed in 1997 in the Fulton Circuit Court, then the Commission should have contacted you for more information. If the Commission does not maintain copies of these documents, then the response of the President of the Commission was appropriate.

### BACKGROUND

According to the information provided in your complaint and copies of correspondence provided, on October 5, 1999<sup>2</sup>, you hand delivered a public records request to Mr. Bob Allen, President of the Commission asking for the following:

A copy of "the rules for the administration of the affairs of" the Commission and the "uniform rules prescribed by" the Commission "pertaining to investigations and hearings, and the rules regarding public comment or input."

As further clarification of your request, you noted that the Commission's attorney, Mr. Steele referenced these alleged rules as Exhibits E and J in findings of fact filed with the Fulton Circuit Court in July 1998<sup>3</sup>.

In his response, Mr. Steele states that your request referred to the exhibit numbers from the Fulton Circuit Court lawsuit. When you delivered your request in person to the Commission, Mr.

Allen allegedly showed you a copy of the rules of procedure, the same ones that were attached to Mr. Steele's November 2, 1999 letter, and you told him that you already had a copy of these rules. Apparently, there was some confusion based upon the statement that you already had the rules offered by Mr. Allen and a reference to exhibits in the lawsuit and he had no further clarification about what you wanted. Mr. Allen then responded to your request in a letter dated October 12, 1999 referring you to the Court Clerk to obtain copies of the exhibits from the court record as the Commission did not have them.

### ANALYSIS

There is no question that the Commission is subject to the provisions of the Access to Public Records Act (hereinafter, "APRA.") "It is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government." Ind. Code  $\alpha$  5-14-3-1. Further, the Indiana General Assembly has provided that the APRA is to be liberally construed in favor of this policy and the burden of proof for nondisclosure of a public record lies with the public agency, not the person seeking access to the public record. Id.

A public record is defined to include any information, in whatever form, that is filed with, created, received or maintained by a public agency. Ind. Code  $\alpha$  5-14-3-2. Public records are to be available for copying and inspection unless the public record is confidential under Indiana Code subsection 5-14-3-4(a) or nondisclosable at the agency's discretion under Indiana Code subsection 5-14-3-4(b)<sup>4</sup>. A public agency, therefore, is obligated to produce any disclosable public record that is maintained by the agency.

When a public records request is made, the requestor must make his or her request with reasonable particularity. Ind. Code  $\alpha$  5-14-3-3(a)(1). There is no Indiana case law defining "reasonable particularity," but the Florida courts have held that a public agency has the affirmative duty to notify the requestor if more information is needed in order to respond to the request. *Salvador v. City of Stuart, No. 91-812 CA (Fla. 19th Cir. Ct., December 17, 1991.)* Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request. , Ind. Code  $\alpha$  5-14-3-1.

Under the facts presented, you made your request on October 5, 1999. Mr. Allen claims that he provided you on that very date the opportunity to have a copy of the rules attached to Mr. Steele's letter of November 2nd. In a letter dated October 12, 1999, Mr. Allen then informed you that they did not have copies of Exhibits E and J from the Fulton Circuit Court lawsuit. It appears that there may have been some misunderstanding on the part of Mr. Allen as to what you were requesting. In my reading of your request, it was clear that you wanted the rules of procedure of the Commission, the existence of which was evidenced by their use as exhibits in a lawsuit involving the Commission. While it appears clear what you were requesting on October 5th, Mr. Allen thought that you were requesting something different than what he had offered.

It is my opinion that the Commission, through its President, should have asked for more clarification if there was confusion as to what documents you were requesting. If the Commission does not have the documents requested, then it is an appropriate response under the APRA to inform the requestor that the public agency does not have the public records requested.

### CONCLUSION

It is my opinion that the burden for seeking clarification of a public records request lies with the public agency, in this case, the Akron Advisory Plan Commission. If the Commission does not maintain copies of public records that are requested, however, it is an appropriate response to a public records request to inform the requestor that the agency does not have copies of the requested documents.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Wayne E. Steele, Attorney  
Town of Akron

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<sup>1</sup> You had originally filed two complaints against the Akron Advisory Plan Commission. The Commission produced one of the requested records and you withdrew that complaint.

<sup>2</sup> According to your complaint, you had made at least 11 requests to the Commission for this information from February 1998 through October 1999.

<sup>3</sup> 25C01-9710-CP-296.

<sup>4</sup> There has been no claim that the rules of procedure of the Commission are confidential or otherwise nondisclosable under the APRA