



STATE OF INDIANA

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February 22, 2009

Beverly Perkins
1237 West Washington
South Bend, Indiana 46601

Re: Formal Complaint 09-FC-28; Alleged Violation of the Access to Public Records Act by the Saint Joseph Circuit Court Clerk

Dear Ms. Perkins:

This advisory opinion is in response to your formal complaint alleging the Saint Joseph Circuit Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk did not violate the APRA by not providing a copy of a record when it was a record the Clerk does not maintain.

BACKGROUND

You allege that on December 19, 2008 you appeared at the Clerk's office and requested a copy of a probable cause affidavit from October 2004. You allege the Clerk denied you access to the record. You enclose a copy of a letter from the Clerk's office, dated December 19, indicating there is not a search warrant in the file corresponding to the cause number you provided. Your complaint was postmarked January 15, 2009 and my office received it on January 22.

The Clerk responded to the complaint by letter dated January 23. The Clerk confirms she has reviewed the file and finds no copy of the search warrant.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Clerk is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours unless the public records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, you requested a copy of a search warrant, and you provided the cause number associated with the warrant. The Clerk's office checked the appropriate file and found no search warrant. While a public agency has a duty to provide access to records it maintains, an agency cannot provide access to records which it does not maintain. An agency cannot be found to have denied access to a record it does not maintain. Therefore, the Clerk did not deny you access to a record in violation of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Rita Glenn, Saint Joseph Circuit Court Clerk