

March 13, 2008

John Ray
DOC #106679
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 08-FC-78; Alleged Violation of the Access to Public Records Act by the Grant County Circuit and Superior Courts Clerk

Dear Mr. Ray:

This advisory opinion is in response to your formal complaint alleging the Grant County Circuit and Superior Courts Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Clerk's response to your complaint for your reference. It is my opinion the Clerk's response to your request was untimely but the Clerk did not otherwise violate the APRA.

BACKGROUND

In your complaint you allege that you submitted a request to the Clerk for a copy of an affidavit for probable cause and a warrant. You filed this complaint on March 7, 2008, alleging that the time for response had expired and you had received nothing from the Clerk.

The Clerk responded to the complaint by letter dated March 10. The Clerk indicates the office received the request on February 25 and forwarded the request to the Court on the same day. The Clerk received the request back from the Court on March 6 and on March 7 sent you copies of the requested records.

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. 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).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

The Clerk received the request on February 25. Pursuant to I.C. § 5-14-3-9(b), the Clerk should have responded to the request by March 3. A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. Here, the Clerk could have sent a response to you indicating the Clerk was forwarding the request to the Court. The Clerk then could send the requested documents after receiving the information back from the Court.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk's response to your request was untimely under the APRA but did not otherwise violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: J. Mark Florence, Grant County Clerk of the Circuit and Superior Courts