



STATE OF INDIANA

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February 18, 2010

Mr. Sam Williams
DOC # 885684
727 Moon Rd.
Plainfield, IN 46168-9400

Re: Formal Complaint 10-FC-22; Alleged Violation of the Access to Public Records Act by the Madison County Circuit Court Clerk

Dear Mr. Williams:

This advisory opinion is in response to your formal complaint alleging that the Madison County Circuit Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of the Clerk's response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that the Clerk failed to respond to a request you sent on December 18, 2009. You would like the Clerk to provide you with a copy of a restraining order filed on November 4, 2009, or to otherwise provide you with the means to obtain the document.

My office forwarded a copy of your second complaint to the Clerk. In response, Clerk claims that she maintains a log of all inmate correspondence but has no correspondence from you. The Clerk asserts that she checked with each of her office's departments but has no record of a request from you. The Clerk also states that the record you seek is partially confidential, but the Clerk will provide you with that record upon receipt of the appropriate fees.

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 does not dispute that her office is 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 Clerk's public records 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).

Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Thus, if the Clerk received your request and did not respond to it within these timeframes, the Clerk violated the APRA by failing to provide you with a response within seven (7) days. If the Clerk did not receive your request, however, it is axiomatic that she was under no obligation to respond.

As I am not a finder of fact, I express no opinion as to whether or not the Clerk did in fact receive your request. However, I trust that her obvious willingness to provide you with your requested records upon receipt of a copy fee and postage satisfies your request.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk received your request and failed to respond, the Clerk violated the APRA. If the Clerk did not receive your request, the Clerk did not violate the APRA because she was under no obligation to respond to a request that she did not receive.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Ludy Watkins, Madison County Clerk