



STATE OF INDIANA

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November 1, 2010

Mr. Delmas Sexton II
417 S. Calhoun St.
Ft. Wayne, IN 46202

Re: Formal Complaint 10-FC-259; Alleged Violation of the Access to Public Records Act by the Allen County Clerk

Dear Mr. Sexton:

This advisory opinion is in response to your formal complaint alleging the Allen County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Clerk's response is enclosed for your reference.

BACKGROUND

In your complaint, you state that you are writing to "formally complain of the policy of the Clerk of the Allen Superior Court as she denies access to public records to poor incarcerated persons contrary to 'any person' in the statutory language." You wrote to the Clerk on September 20, 2010, to receive a copy of local trial rules required to be displayed by the Clerk under Ind. Trial Rule 81. The Clerk denied your request and informed you that you should have someone retrieve it at a library or online. However, you are incarcerated and the facility will not permit you to write anyone other than a court, the Clerk, or another governmental entity. You ask me to declare the Clerk's "policy" void.

My office forwarded a copy of your complaint to the Clerk. Assistant Allen County Attorney Thomas Hardin responded on her behalf. Mr. Hardin notes that you requested that the Clerk "provide" you with the trial rules. However, T.R. 81(F) and (G) merely require that the records you requested be "posted" at the Clerk's office and published online; they do not require the Clerk to provide you with the records. Mr. Hardin notes that the rules are indeed posted at the Clerk's office and are freely available for inspection. Finally, if you would like a copy of the rules, then the Clerk is willing to mail it to you upon receipt of the applicable fees. Alternatively, if you can provide the Clerk with a court order proving your indigency and mandating that the Clerk provide you with records at no cost to you, the Clerk will comply.

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 Clerk is 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 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).

Here, the Clerk has published the records you requested online and posted them in the Clerk’s office. I understand that you did not request a copy of the rules from the Clerk, but if you had the APRA permits a public agency to charge a fee for copying a record. *See* I.C. § 5-14-3-8. Moreover, I.C. § 33-37-5-1 provides that a court clerk shall collect a fee of one dollar (\$1) per page for legal size or letter size pages, including a page only partially covered with writing. Nothing in the APRA requires a public agency to waive an applicable copy fee or to mail you records at no charge. Upon receipt of the applicable fees, I trust that the Clerk will provide you with a copy of the records you seek.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Thomas A. Hardin