



STATE OF INDIANA

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November 29, 2010

Mr. Philip Gregory Yeary
DOC # 169399
1946 W. U.S. 40
Greencastle, IN 46135

Re: Formal Complaint 10-FC-265; Alleged Violation of the Access to Public Records Act by the Switzerland County Clerk

Dear Mr. Yeary:

This advisory opinion is in response to your formal complaint alleging the Switzerland County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* As of today, we have not received a response from the Clerk.

BACKGROUND

In your complaint, you allege that the Clerk denied you access to records pertaining to your divorce. You sent your request to the Clerk on September 8, 2010, and had not received a response as of October 8th.

My office forwarded a copy of your complaint to the Clerk. As of today, we have not yet received a response.

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

Here, it is unclear to me why the Clerk denied your request. Without the benefit of a response from the Clerk, I do not have sufficient information to determine whether or not the substance of the denial violated the APRA. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Facility has not provided a justification for withholding the records at issue here, it is my opinion that the Facility has failed to carry that burden.

If the Clerk cannot justify withholding the records under the APRA, I encourage the Clerk to release the records to you as soon as possible. To the extent the Clerk persists in denying access following the issuance of an advisory opinion from this office and you believe the Clerk is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

I note that nothing in the APRA requires a public agency to waive an applicable copy fee or to mail you records at no charge. *Op. of the Public Access Counselor 10-FC-59.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk has not sustained its burden of proof to demonstrate that it had a legal basis to withhold the records you requested.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Ginger A. Peters