



STATE OF INDIANA

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March 30, 2010

Mr. Robert E. Wolf
7701 Londonderry Ct.
Muncie, IN 47304

Re: Formal Complaint 10-FC-53; Alleged Violation of the Access to Public Records Act by the Clerk of the Delaware County Clerk of Circuit Court

Dear Mr. Wolf:

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

BACKGROUND

According to your complaint, the Clerk provided you with a copy of the declaration of candidacy of your opposing candidate in the upcoming election for precinct committeeman. The Clerk made a copy of the form, but the notarized portion of the form did not appear on the copy provided to you. You claim that, "[i]t is not my responsibility to confront [the Clerk] in a public building in order to receive what the law mandates him to render."

In response to your complaint, the Clerk was unaware that the notarized portion of the record was not copied; he claims that the copy you enclosed with your complaint is the first time that he has seen it. The Clerk states that he spoke with you for several minutes after he gave the copy to you but you never mentioned that the form was not complete. The Clerk further responds by saying that if you believed part of the form you requested was not copied, all you had to do was request a replacement copy. Moreover, the Clerk notes that you have since returned to the Clerk's office and been provided with another copy.

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 a “public agency” under 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 nondisclosable under the APRA. I.C. § 5-14-3-3(a).

I am not convinced that the Clerk ever denied your request. In fact, it appears the Clerk made a good faith effort to provide you with the record you requested. Moreover, in reviewing the incomplete copy of the record that you enclosed with your complaint, it is fairly obvious that the copy machine simply malfunctioned and failed to copy the entire page. The Clerk maintains that he would not have hesitated to provide you with a complete copy of the record if you had simply informed him of the copying error and I have no reason to suspect otherwise. Under such circumstances, it was incumbent upon you to bring the error to the Clerk’s attention and request another copy. In my opinion, your own failure to notify the Clerk of the problem does not put the Clerk in violation of the APRA.

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: Steven G. Craycraft