



STATE OF INDIANA

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August 15, 2011

Mr. Gearld Clark
DOC # 210432
3038 W 850 S
Bunker Hill, Indiana 46914

Re: Formal Complaint 11-FC-183; Alleged Violation of the Access to Public Records Act by the Vigo County Clerk's Office

Dear Mr. Clark:

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

BACKGROUND

In your complaint, you allege that you submitted to the Clerk a written request on July 18, 2011 for a copy of the following public records pertaining to Cause No. 84-D06-0609-FA-2772:

- Pre-Trial Discovery, including all depositions, affidavits, arrest warrant, evidence logs, CD of court/trial proceedings, any documents obtained from, or in possession of any investigator, legal assistance, paralegal, secretary, or clerk employed by the court; and
- Any and all documents known to exist but not specifically mentioned herein, in the Clerk's possession.

As of July 28, 2011, the date you filed your complaint with the Public Access Counselor's Office, you allege that the Clerk has failed to responds to your request.

In response to your formal complaint, Patricia R. Mansard provided that the Clerk responded to your request on July 27, 2011 and provided one-hundred and forty (140) pages of information responsive to your request.

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.” *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* 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. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Absent evidence to the contrary, and consistent with the practice in other contexts, this office calculates and assumes *receipt* within three (3) days of the date of mailing. *See* Ind. Trial Rule 6(E); Ind. Appellate Rule 25(C); I.C. § 4-21.5-3-2(e); *Opinion of the Public Access Counselor 04-FC-26*.

Here, there is a factual dispute as to whether the Clerk responded to your request. In your complaint, you claim that the Clerk failed to respond to your request. In Ms. Mansard’s response, she provides that the Clerk responded to your request on July 27, 2011 with one-hundred and forty (140) pages of information responsive to your request. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. If the Clerk failed to respond to your written request, it acted contrary to section 9 of the APRA. On the other hand, if the Clerk responded to your request on July 27, 2011, then it fulfilled its obligations under the APRA. I note that the Clerk mailed records responsive to your request exactly one day prior to your filing a formal complaint with this Office; as such I trust that you have now received the Clerk’s response and it was in satisfaction of your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk never responded to your request, then it violated the APRA. If, however, the Office responded to your request on July 27, 2011, then the Clerk did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Patricia R. Mansard