



STATE OF INDIANA

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September 27, 2011

Troy Howard
DOC # 876260
1946 W. U.S. Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 11-FC-236; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Court Clerk

Dear Mr. Howard:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Douglas Masson, Attorney, responded on behalf of the Clerk. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request in writing on August 22, 2011 to the Clerk for "records that were ordered by the Court to Appellant on August 10, 2011." As of September 15, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you provide that you have not received a response from the Clerk.

In response to your formal complaint, Mr. Masson provided that the Clerk received your letter on August 18, 2011. You included with your letter a copy of the Court's order requiring the Clerk to send to you all information that was requested. The Clerk processed the request as a filing in a criminal case, not a public records request, as you made reference to the Cause 79-D01-0205-FA-10 and made no indication in the correspondence that the request was being made outside of the criminal proceeding and instead, pursuant to the APRA. In regards to the context of the letter, the request is more appropriately defined as a request for an Assembly of the Record of Appeal under Ind. R. App. Proc. 12(A) or for Access to the Record on Appeal under Ind. R. App. Proc. 12(C). Different procedures and timelines exist under these provisions than under the APRA. In any case, the records that you requested were mailed to you on September 19, 2011.

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).

The APRA provides the right to inspect and copy records of a public agency. However, it is separate and distinct from other court proceedings, both civil and criminal. The Clerk contends you did not make a records request pursuant to the APRA but instead requested that it comply with a Court order in your criminal proceeding. While the APRA does not require a requester to specifically invoke the APRA, it is my opinion that after reviewing the request you made of the Clerk that it was reasonable for it to interpret it as being made pursuant to Indiana Rules of Appellate Procedure. As such, your request was made through means outside the scope of the APRA. *See Opinions of the Public Access Counselor 07-FC-314 and 08-FC-234*. Regardless, the Clerk has provided that it has mailed to you all records instructed of it by the Court’s order.

CONCLUSION

For the foregoing reasons, it is my opinion that 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, somewhat stylized font.

Joseph B. Hoage
Public Access Counselor

cc: Douglass Masson