



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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October 25, 2011

Donnell L. Moore
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 11-FC-264; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Court Clerk

Dear Mr. Moore:

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 written request to the Clerk on September 26, 2011 for "Charging Information for Count VII (Habitual Offender) under Cause No. 79-D02-1003-FB-00007. As of October 17, 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 advised that the Clerk mailed all records responsive to your request on October 3, 2011 and submitted a copy of the Court's docket sheet for Cause No. 79-D02-1003-FB-00007 reflecting the disclosure.

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). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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. Here, you provide as of October 17, 2011, you have not received any response from the Clerk. The Clerk has advised that all records responsive to your request were mailed on October 3, 2011, within the timelines provided by the APRA.

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 request, it is my opinion that it acted contrary to section 9 of the APRA. However, if the Clerk mailed all records responsive to your request on October 3, 2011, then it fulfilled its obligations under the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk failed to respond to your request, it acted contrary to section 9 of the APRA. But, if the Clerk produced all records responsive to your request on October 3, 2011, it is my opinion that it 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, flowing style.

Joseph B. Hoage
Public Access Counselor

cc: Douglass Masson