



STATE OF INDIANA

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March 17, 2011

Mr. Michael J. Shepard
4724 Penfold Street
Evansville, IN 47725

Re: Formal Complaint 11-FC-52; Alleged Violation of the Access to Public Records Act by the Warrick County Clerk of Circuit Court

Dear Mr. Shepard:

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

BACKGROUND

In your complaint, you allege that you requested records from the Clerk on January 28, 2011. After you had not yet heard back, you sent a second request to the Clerk on February 4, 2011. As of February 14, 2011, you had not yet received a response from the Clerk.

In response to your complaint, the Clerk states that her office received your request on January 31st. Upon receipt, it was forwarded to the Warrick County Superior Court #1 to fulfill. That court prepared the records and sent them to you on February 15th.

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 does not dispute that it 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).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). 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. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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, the Clerk states that, upon receipt, her office forwarded your request to the court that maintained the records. The court then provided you with the records on February 15th. While the Clerk should have responded to your request within seven days (by, for example, sending you an acknowledgment informing you that it was procuring the records for you), the Clerk otherwise complied with the APRA by releasing all responsive records to you within approximately two weeks of receiving your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk should have responded to your request within seven days but did not otherwise violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

cc: Sarah E. Topper