



STATE OF INDIANA

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April 13, 2011

Michael J. Shepard
4724 Penfold Street
Evansville, IN 47725

Re: Formal Complaint 11-FC-70; Alleged Violation of the Access to Public Records Act by the Putnam County Clerk of Circuit Court

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Putnam county Clerk of Circuit Court ("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 reference.

BACKGROUND

In your complaint, you allege that the Clerk violated the APRA by failing to respond to your January 21, 2011, request for a copy of a summons form. As of February 17, 2011, you had not received a response to that request. On March 11th, you sent additional correspondence to this office stating that you resubmitted your request on February 22nd and informed the Clerk of a change in your mailing address at that time, but you had still not received a response.

In response to your complaint, the Clerk states that her office received neither your January 21st request nor your change of address notification. The Clerk attempted to respond to a February 22, 2011, request from you, but the mailed response was returned to the Clerk as undeliverable because it was sent to your previous address. On March 17th, after speaking with you via telephone and learning of your current address, the Clerk once again responded to your request and forwarded responsive records to your current address.

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." I.C.

§ 5-14-3-1. The Clerk is a public agency for the purposes of 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 records are excepted from disclosure as confidential or otherwise 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 repeatedly attempted to respond to your written request, but the Clerk was not aware of your new address until she spoke with you via telephone on March 17th. If the Clerk had no notice of your new address, it is my opinion that the Clerk did not violate the APRA by failing to deliver the records to you. As I also noted in a previous complaint by you against the Indiana State Police, it is incumbent upon you to inform an agency of any new mailing address if your address changes while a public records request is pending. *Op. of the Public Access Counselor 10-FC-45*. In any event, I trust the Clerk's production of your records on March 17th satisfies your complaint.

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: Marty G. Watts