



STATE OF INDIANA

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May 29, 2012

Mark A. Johnson
DOC 192490
1946 W US Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 12-FC-111; Alleged Violation of the Access to Public Records Act by the Monroe County Circuit Court Clerk

Dear Mr. Johnson:

This advisory opinion is in response to your formal complaint alleging the Monroe County Circuit Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Clerk. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you have submitted a series of written requests for public records to the Clerk, most recently on April 18, 2012. As of April 27, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Clerk.

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 twenty-four 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 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 allege that the Clerk has failed to respond in any fashion to your written requests for records.

Without the benefit of a response from the Clerk, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Because the Clerk has not provided a justification for withholding the records at issue here, it is my opinion that the Clerk has failed to sustain its burden.

If the Clerk cannot justify withholding the records under the APRA, I encourage it to release the records to you as soon as possible. To the extent the Clerk persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Clerk to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk violated 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: Monroe County Circuit Court Clerk