



STATE OF INDIANA

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October 15, 2012

Michael A. Christianson
DOC 135489
3038 W. 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 12-FC-298; Alleged Violation of the Access to Public Records Act by the Clerk of the LaPorte County Circuit Court

Dear Mr. Christianson:

This advisory opinion is in response to your formal complaint alleging the Clerk of the LaPorte County Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* LaPorte Circuit Court Clerk, Lynne F. Spevak, responded in writing to your request. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Clerk on or about September 7, 2012 requesting a sentencing and probation order filed under Cause No. 46-C01-0207-FA-050. As of October 9, 2012, the date you filed your formal request with the Public Access Counselor's Office, you further allege that the Clerk has failed to respond to your request in any fashion.

In response to your formal complaint, Ms. Spevak advised that the Clerk does not have a record of receiving any request from you since March 8, 2011. The address maintained by the Clerk for you is in Carlisle, Indiana, as opposed to your current Bunker Hill, Indiana location. Regardless, the Clerk does not maintain a copy of the probation order that you have requested. Ms. Spevak has found a copy of your sentencing order and will be forwarding it to you at the Bunker Hill address and updating your address in its system.

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 Clerk maintains that it did not receive your request. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Op. of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Clerk received your request. Under the APRA, if a 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). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Clerk received your request and did not respond to it within these timeframes, the Clerk violated section 9 of the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it. Regardless, the Clerk has now forwarded to you a copy of the sentencing order that you had requested and informed you that it does not maintain a copy of the probation order, which I trust, is in satisfaction of your formal complaint.

I would also note that The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). If the Clerk has previously provided you with copies of your file, including a copy of the sentencing order that has now been produced, it would be under no obligation to continue to provide you with multiple copies of an identical record.

CONCLUSION

Based on the foregoing, it is my opinion that the Clerk did not violate the APRA if it never received your written request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Lynne F. Spevak