



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

May 15, 2013

Mr. Craig Franke
11715 Fox Road
#400-202
Indianapolis, IN 46236

Re: Formal Complaint 13-FC-125; Alleged Violation of the Access to Public Records Act by the Franklin Township Small Claims Court Clerk

Dear Mr. Franke:

This advisory opinion is in response to your formal complaint alleging the Franklin Township Small Claims Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Thomas J. DeRue, Jr., Attorney, responded on behalf of the Clerk. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you allege that on April 11, 2013, you spoke by telephone with an employee of the Clerk's office regarding access to Case File No. 49K09-SC-1302-000824. You were informed that the file was not public information, no part of the file had been sealed by the Court, and that you should contact the plaintiff's attorney regarding access. Thereafter, you appeared at the Clerk's office and requested to inspect the file. You were again informed that the file was not public information and that no part of the file had been sealed by the Court. The employee ultimately relented, but required that you provided a driver's license prior to inspection. You refused to provide identification, at which time the employee sought the assistance of the constable.

In response to your formal complaint, Mr. DeRue advised that the Clerk should have allowed you access to inspect the record without objection or issue. The employee that you spoke with was new to the Clerk's office and was unsure of the protocol to be followed regarding APRA requests. On behalf of the Clerk, Mr. DeRue apologized for any inconvenience caused and a copy of the file is enclosed for your review.

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 a request is made orally, either in person or by telephone, a public agency may deny the request orally. *See* I.C. § 5-14-3-9(c). An oral request is deemed denied if the agency fails to respond within twenty-four hours. *See* I.C. § 5-14-3-9(a)(2). 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). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Pursuant to section 9 of 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).

Here, Mr. DeRue has advised that the Clerk should have allowed you to inspect the file without objection or issue. Accordingly, it is my opinion that the Clerk violated section 9 of the APRA by failing to allow you to inspect the file that was requested. Mr. DeRue has apologized for the inconvenience caused and provided a copy of the file for your review. As to your inquiries regarding the appropriateness of providing identification prior to disclosure, Counselor Kossack addressed a similar issue in 2010. *See Opinion of the Public Access Counselor 10-FC-174*. Counselor Kossack opined:

With regard to the fact that the Form asks for a copy of the requester’s driver’s license and requires that the request be signed under oath, the APRA contains no such requirements. Thus, the burden is on the Prosecutor to show why such procedures are necessary. *See* I.C. § 5-14-3-1. In 2004, Counselor Davis issued an opinion regarding the legality of a public records request form used by a county planning commission. In that matter, the form restricted requesters’ ability to request public records to a certain category of records. Counselor Davis opined that the form violated the APRA, and she added that the form’s requirement that the request be typewritten was an illegal interference with the right to inspect and copy public records:

Upon review of the form provided to you, I find . . . that it allows a requestor to request access only to a certain type

of information, not all public records maintained by the agency. Because the Commission failed to respond to your requests, I do not know if your request was or would have been denied on the basis that it was not submitted on the Commission's form. To the extent that the Commission requires a person to submit requests for records on this form, and the form allows a person to request only a certain type or types of records and excludes requests for other records, use of that form denies and interferes with the exercise of a person's right to inspect and copy the public records of the agency. Therefore, required use of such a form is a violation of the Access to Public Records Act. . . .

You further allege that the Commission requires that the records request form be typewritten. While an agency may require that a request for public records be submitted in writing, it cannot require that the request be typewritten. Few people have access to the means with which to submit a typewritten request. Therefore, requiring a request be in such a format denies and interferes with the exercise of a person's right to inspect and copy the public records of a public agency.

Opinion of the Public Access Counselor 04-FC-167. Similarly here, unless the Prosecutor can show that requiring requesters to submit a request under oath with a copy of the requester's driver's license is necessary to safeguard confidential records or comply with some other applicable statute or rule, it is my opinion that such requirements interfere with the rights of a requester under subsection 3(a) of the APRA. *See Opinion of the Public Access Counselor 10-FC-174.*

It is my opinion that the Clerk violated the section 3(a) of the APRA in requiring that a copy of your driver's license be produced prior to inspection. *See also Opinion of the Public Access Counselor 12-FC-202.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk violated section 9 of the APRA by failing to allow you to inspect the file that was requested. Further, it is my opinion that the Clerk violated section 3(a) of the APRA by requiring that identification be produced prior to the inspection of the record.

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 distinct "H".

Joseph B. Hoage
Public Access Counselor

cc: Thomas J. DeRue, Jr.