



STATE OF INDIANA

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September 25, 2014

Mr. Dennis Knight #854541
Indiana State Prison
1 Park Row
Michigan City, IN 46360

Re: Formal Complaint 14-FC-195; Alleged Violation of the Access to Public Records Act by the Clerk of the St. Joseph County Court

Dear Mr. Knight,

This advisory opinion is in response to your formal complaint alleging the Clerk of the St. Joseph County Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk has provided a response to your complaint via Ms. Terri J. Rethlake. Her response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 26, 2014.

BACKGROUND

Your complaint dated August 18, 2014 alleges the Mayor's Action Center violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about July 31, 2014, you submitted a public records request to the Clerk seeking several documents under an indented cause number. As of the date of the filing of your complaint, you have not received any documentation.

In response to your complaint, the Clerk indicates some of the documents you seek are not in the possession of the Clerk, but are with the individual judge. She suggests you contact the Judge for the records.

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 Ind. Code § 5-14-3-1. The Clerk of St. Joseph County is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 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 (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

As a matter of course, your formal complaint appears to be a bit premature as it was filed merely 17 business days after you mailed your request. Given the challenging logistics of Department of Correction mail protocol, it is likely the Clerk had your request for much less. An agency has a reasonable time to produce documents under Ind. Code § 5-14-3-3.

Furthermore, it seems as if the request was served upon the wrong public official. While the Clerk is correct she is not obligated to produce records which are not in her custody, I would suggest it is best practice to forward a requester’s submission to the appropriate official in this case. A court Clerk should easier be able to forward a request to a presiding judge. I encourage the Clerk to adopt this practice in the future. As for your current request, it should be re-submitted to the appropriate judge.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Clerk of the St. Joseph County has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt

Public Access Counselor

Cc: Ms. Terri J. Rethlake