



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

BRUCE L. ALDRICH

Complainant,

v.

MARION COUNTY CLERK'S OFFICE

Respondent.

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17-FC-136

ADVISORY OPINION

July 31, 2017

This advisory opinion is in response to the formal complaint alleging the Marion County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code §§ 5-14-3-1–10. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 15, 2017.

BACKGROUND

Mr. Bruce L. Aldrich ("Complainant") filed a formal complaint alleging the Clerk violated APRA by improperly denying him access to public records. Specifically, the Complainant has requested copies of certain transcripts from criminal proceedings where he was a defendant.

On February 28, 2017, the Clerk received a letter from the Complainant inquiring about the total cost of all the transcripts in his case, and whether the cost of postage was included. The Clerk has acknowledged receiving the letter. The Clerk stated that her office does not maintain the transcripts of court proceedings because transcripts are created by the court reporters of Marion Superior Courts upon request. Essentially, the Clerk does not maintain records responsive to the Complainant's request nor creates the records the Complainant requested. So, the Clerk forwarded the Complainant's letter to the appropriate court that same day. As a result, a court reporter mailed Mr. Aldrich a letter outlining the cost for all the transcripts



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connected to the case number he specified in his inquiry. The letter with the cost estimates was dated April 18, 2017.

On April 18, 2017, the Clerk received a formal public records request from the Complainant where he requested copies of guilty plea transcripts and sentencing transcripts. In addition he asked to be informed about the number of pages for the records both separately and combined. Although the Clerk acknowledged receiving the Complainant's formal request for the transcripts, the request was also forwarded to the appropriate court for review.

On April 20, 2017, the court denied the Complainant's request for the transcripts because he "does not have any actions pending before the Court and there is no basis for providing transcripts at public expense at this time." The Complainant stated that he received the letter from the court outlining the total cost for the transcripts he requested and the court's denial of his request.

After receiving the responses, the Complainant claims that he sent the Clerk a second formal request "underlining and pointing out" that he wanted only a page count and costs for the transcripts in question. It is worth noting that the Complainant did not include a copy of this request with his formal complaint and the Clerk made no reference to a second request in her response. In any event, the Complainant claims that more than a month has gone by without acknowledgment of the second request, or a response by 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." Ind. Code § 5-14-3-1. The Marion County Clerk's Office is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). So, any person has the right to inspect and copy the Clerk's public records during regular business hours unless the records are exempt from disclosure under APRA. Ind. Code § 5-14-3-3(a).

In general, if the requested record (1) is a public record from a public agency; (2) is not exempt from disclosure; and (3) is identified with reasonable particularity, the public agency cannot deny access to the record under APRA. The term "reasonable particularity" is not defined under the APRA. Even so, if a public agency can determine what record a requestor is seeking, then the request will likely meet the standard for reasonable particularity.



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Still, under certain circumstances a public agency may deny a public records request. *See* Ind. Code § 5-14-3-9. A denial *must* include a statement of the specific statutory reason for nondisclosure of a record and the name and title of the person responsible for the denial.

Here, the Complainant's public records request itself appears substantively adequate for purposes of APRA. Mr. Aldrich, however, did not submit the request to the appropriate public agency. Since the transcripts at issue here are not created, received, retained, maintained, filed by or with the Clerk, the request was misplaced. Even a perfectly executed public records request must fail if submitted to the incorrect public agency.

Nevertheless, the Clerk should have responded to the records request as required by APRA. If a request is written and received by the public agency by fax, mail, or email, then APRA requires the agency to respond within *seven calendar days* of receiving the request. Here, the Complainant's request was both written and received by mail. Thus, the Clerk's written response was due within seven calendar days, even though the agency did not have the records. Something as simple as a statement indicating that the public agency does not maintain the record(s) responsive to the request will usually be good enough.

Undoubtedly, I recognize and appreciate that the Clerk—as a courtesy to the Complainant—forwarded the records request to the proper public agency. I am certainly not discouraging such acts of good faith going forward. Moreover, APRA does not require a public agency that receives a records request in error to forward the request to the appropriate agency. It does, however, require a response by the agency that receives the request. Toward that end, APRA does not prevent a public agency from forwarding a records request to the appropriate agency as a courtesy. Put differently, the forwarding of a public records request to the proper agency as a courtesy is encouraged if APRA's requirements are concurrently met. The Clerk should be mindful of this going forward.



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CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Marion County Clerk's Office should have acknowledged and/or denied Complainant's public records request within seven days of receiving the request.

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "LH Britt", written over a white background.

Public Access Counselor

Cc: Russell Hollis, Deputy Director.