

November 22, 2000

Mr. Carl Erlewein, 870270  
W.V.C.F. P.O. Box 1111  
Carlisle, Indiana 47838

Re: Advisory Opinion 00-FC-39 *Denial of Access to Public Records by the Fayette County Clerk's Office.*

Dear Mr. Erlewein:

This is in response to your formal complaint, which was received on November 15, 2000. You have alleged that the Fayette County Clerk's Office ("Clerk's Office") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3, by failing to respond to your requests for access to the Chronological Case Summary and other documents concerning a specific cause number. Ms. Melinda Sudhoff, Fayette County Clerk, responded in writing to your complaint in a letter dated November 15, 2000. A copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Clerk's Office denied you access to public records under the APRA when it failed to respond to your request within seven (7) days after your request was received as required under Indiana Code section 5-14-3-9. This denial is actionable under Indiana Code section 5-14-3-9(d).

### BACKGROUND

According to your complaint, you mailed a public records request to the Clerk's Office on November 1, 2000. You requested a copy of the Chronological Case Summary and any other documents concerning cause number 21C01-9408-CF-096. As of the time of your formal complaint, you had not received a response to your request.

In her response, Ms. Sudhoff indicated that Judge Pflum had instructed her to inform you that you should pay for the information in advance of receipt. She admitted that she was negligent in getting a letter sent to you in a timely manner regarding this request. Ms. Sudhoff indicated the failure to respond in a timely manner may have been due to the events surrounding the recent election conducted by her office and that the secretary corresponding with Judge Pflum on this matter was out of the office for one week due to a family emergency. Since the filing of your formal complaint, however, Ms. Sudhoff responded to your November 1st request and provided you with a copy of the Chronological Case Summary in the referenced cause.

## 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 Clerk's Office is clearly a public agency for the purpose of the APRA. Ind. Code §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code §5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code §5-14-3-9(b).

Under the facts presented, it is my opinion that the Clerk's Office failed to respond to your written request dated November 1, 2000 within seven (7) days as is required under Indiana Code section 5-14-3-9(b). The failure to respond constituted a denial under the APRA that is actionable in court under the APRA.

## CONCLUSION

It is my opinion that the Fayette County Clerk's Office failed to respond within seven (7) days after receiving your public records request as was required under Indiana Code section 5-14-3-9(b). This denial is actionable in court under the Access to Public Records Act.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Melinda Sudhoff  
County Clerk

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