

October 5, 2001

Mr. Herbert E. Robertson
#885415 7B2E
Post Office Box 601
Pendleton, IN 46064

Re: Advisory Opinion 01-FC-58; Alleged Denial of Access to Public Records by the Vanderburgh Circuit Court.

Dear Mr. Robertson:

This is in response to your formal complaint, which was received on September 17, 2001. You have alleged that the Clerk of the Vanderburgh Circuit Court ("Clerk's Office") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Clerk's Office failed to respond to your request for information on "Cause No. 6086," which was dated August 16, 2001. Ms. Carla J. Hayden, Chief Deputy Clerk, responded in writing to your complaint. 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 did not violate the APRA with respect to your public records request because that Office never received your request.

BACKGROUND

According to your complaint, on August 16, 2001, you mailed a public records request to the Clerk's Office requesting the following information from a case labeled "Cause No. 6086":

1. Probable cause affidavit and charging information;
2. Copy of warrant;
3. Pre-sent. investigation report;
4. Sent. Rec. 6-26-87; and
5. Amed. Sent. Rec. 7-2-87.

As of the time you filed your formal complaint, you allege that you had not received any response from the Clerk's Office.

In her response, Ms. Hayden stated that the Clerk's Office never received your request of August 16, 2001. It appears that this request was delivered to the Circuit Court Office, not the Clerk's Office despite the fact that you had addressed it to the Clerk. The Court Office did not file stamp your August 16th request, so there is no indication of when it may have been received. Although the Clerk's Office did not receive your request, they are in the process of attempting to respond to your August 16th request, and once they have located the case file, will provide you with any of the requested public records that may

be available to you.

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 purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk's 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. 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 of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, however, the Clerk's Office never received your request. Your request was directed to a separate office for the Circuit Court, which is different from the Clerk's Office. The Clerk's Office could not have been expected to respond to a public records request they never received. For this reason, it is my opinion that the Clerk's Office did not violate the APRA with respect to your public records request. The Clerk's Office, now aware of your request through your formal complaint, is now taking action to produce any public records that may be responsive to your request.

CONCLUSION

It is my opinion that the Vanderburgh Circuit Court Clerk did not violate the Access to Public Records Act by failing to respond to your August 16, 2001 public records request because the Clerk's Office never received your request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Carla Hayden, Chief Deputy Clerk html>