

January 25, 2002

Mr. Carl Erlewein  
Doc # 870270  
Location D-101  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, IN 47838

Re: *Advisory Opinion 01-FC-81*;  
Alleged 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 December 27, 2001<sup>1</sup>. You have alleged that the Fayette County Clerk's Office ("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 public records request. Ms. Melinda Sudhoff, Fayette County 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 the your December 7, 2001 public records request.

### BACKGROUND

According to your complaint, on December 7, 2001 you mailed a public records request to the Clerk's Office requesting several public records concerning Cause Number CR 8612-CM-798 including:

1. the morning portion of the transcript;
2. the pre-sentence report;
3. the sentencing order; and
4. the abstract of sentence.

As of the filing of your formal complaint, you allege that you had received no response from the Clerk's Office.

In her response, Ms. Sudhoff stated that the Clerk's Office has no record of receiving your December 7th public records request. Ms. Sudhoff stated that she examined the Chronological Case Summary of Cause Number CR 8612-CM-798 and found no entries concerning the receipt of the December 7th request. Ms. Sudhoff stated that because it is the common practice for the Clerk's Office to document

any action on a case it is her assumption that the Clerk's Office never received your request. Ms. Sudhoff provided a copy of the CCS, and I have enclosed a copy of that document for your reference. Ms. Sudhoff further stated that because the file is not currently in the Clerk's Office she is unable to determine whether the documents you requested are available for copying.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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 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. 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 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, it appears that the Clerk's Office did not receive your December 7th request. The fact that you received no response to a request that was never received is not a violation of the APRA. It is my opinion, therefore, that the Clerk's Office did not violate the APRA with respect to your public records request of December 7th.

## CONCLUSION

It is my opinion that the Fayette County Clerk's Office did not violate the Access to Public Records Act with respect to your December 7, 2001 request for public records because the Clerk's Office never received that request.

Sincerely,

Sandra K. Barger  
Staff Attorney

Enclosure

cc: The Honorable Melinda Sudhoff,  
Fayette County Clerk

---

<sup>1</sup> Indiana Code section 5-14-5-7 provides that a formal complaint must be filed within thirty (30) days of the alleged denial. Therefore, this opinion will only address the alleged denial of access to public records on December 7, 2001. However, Ms. Sudhoff did address your November 18, 2001 request in her response.