

February 12, 2002

Mr. Michael Mullen  
KittyShark Productions  
Post Office Box 321  
Frazeyburg, OH 43822-0321

Re: *Advisory Opinion 02-FC-05*;

Alleged Violation of the Access to Public Records Act by the Clerk of the Circuit Court of Delaware County.

Dear Mr. Mullen:

This is in response to your formal complaint, which was received on January 14, 2002. You alleged that the Clerk of the Circuit Court of Delaware County ("Clerk's Office") violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you claim that it is inconsistent with the letter and spirit of the APRA to deny a public records request because the requester seeks a mailed response. Ms. Karen D. Wenger, Clerk of the Circuit County of Delaware County, responded in writing to your complaint. A copy of her response is enclosed.

It is my opinion that the Clerk's Office is required under the APRA to provide a copy of public records upon request. However, the APRA does not address whether the Clerk's Office must mail the copies to the requester. Therefore, it is my opinion that although recommended it is not required that public agencies mail public records to the requester.

## BACKGROUND

According to your complaint, on December 29, 2001 KittyShark Productions faxed and mailed a request for the production of documents. You requested non-certified copies of the arrest report, charging information, and court docket concerning various individuals.<sup>1</sup> You assert that on January 3, 2002 you received a voice mail message stating that the Clerk's Office does not respond to mailed public records requests. Then on January 4, 2002 you faxed and mailed Ms. Wenger a letter asking her to reconsider her policy not to honor mailed requests. Later, on January 4, 2002 you received a voice mail message from the Clerk's Office stating again that the request was being denied because you were not physically in the Clerk's Office. Your request to pay all copying fees and postage was not accepted, nor was your offer of a toll-free facsimile number to be used to fax the documents accepted.

In response Ms. Wenger stated that on December 29, 2001 the Clerk's Office received a faxed request for non-certified copies of the arrest reports, charging information, and court docket information

concerning individuals named in the request and the approximate dates of charges. She stated that the Clerk's Office faxed a reply stating that the Clerk's Office does not do criminal background checks, and that someone would need to come in and look the cases up. She further stated that the Clerk's Office does not conduct criminal background searches due to time constraints on employees and liability concerns if something is overlooked in the record. She did state that the Clerk's Office provides public terminals for individuals and professional record searchers to check court dockets, and that they would pull the court file upon request.

## ANALYSIS

The public policy of the APRA states that "(p)roviding person 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." 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).

You contend that the denial of a public records request merely because a requester seeks the production of the records by mail is inconsistent with the letter and spirit of the law. However, the APRA does not require public agencies to mail records in response to a public records request. Although, this Office generally recommends that public agencies mail documents in response to a public records request it is not a violation of the APRA for them not to do so. Whether a public agency's refusal to mail documents in response to a public records request is a violation of the spirit of the APRA is a question for the courts rather than this Office.

I do, however, have some concerns about Ms. Wenger's response to your formal complaint. Ms. Wenger stated that the Clerk's Office does not perform searches for criminal background checks. I agree that the Clerk's Office does not have to search for records when a request is a general in nature i.e. all criminal background information on a specific individual. However, it is my opinion that when specific records are requested such as a copy of an arrest report, charging information, and the court docket those records must be produced upon request. However, as stated above the APRA does not require that the Clerk's Office mail the records to the requester, and it is not a violation of the APRA for the Clerk's Office to refuse to do so.

## CONCLUSION

It is my opinion that the Clerk of the Circuit Court of Delaware County did not violate that Access to Public Records by refusing to mail the public records your requested.

Sincerely,

Sandra K. Barger  
Staff Attorney

cc: The Honorable Karen D. Wenger  
Delaware County Clerk of the Circuit Court

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<sup>1</sup> You redacted the names of the individuals that you requested the information about.