

December 3, 1999

Ms. Debbie L. Alley
402 Indian Shores Road
Crosby, TX 77532

Re: *ADVISORY OPINION No. 99-FC-19:*

Denial of Access to Public Records by the Lake Circuit Court Clerk's Office.

Dear Ms. Alley:

This is in response to your formal complaint, which was received on November 8, 1999. You have asked whether the Lake Circuit Court Clerk's Office (hereinafter "Clerk's Office,") violated the Indiana Access to Public Records Act ("APRA") when you were denied access to public records from a miscellaneous record book that is reportedly maintained by the Clerk's Office. Ms. Wanda Leggett, Supervisor in the Clerk's Office, responded in writing on November 15, 1999. A copy of her response is enclosed for your reference. It is my opinion that the Clerk's Office did not violate the APRA by failing to provide access to a public record that is not maintained in that Office.

BACKGROUND

According to your complaint, you are attempting to obtain copies from miscellaneous record books in Lake County. You had knowledge of these books because your cousin had obtained information from them with the help of an attorney in 1993. You were also guided in your search by information from an index prepared by the Indiana Historical Society in 1981 listing references to Circuit Court record books in Lake County, Indiana for persons naturalized as United States citizens in that county before the year 1907.¹ There is language on the cover of the index that states clearly that the index does not "include names from the naturalization record books and related documents usually found in the clerk's office in each county." You corresponded to the Clerk's Office requesting copies of records for a list of 6 persons, including the volume and page numbers listed in the Historical Society index. In response, Ms. Leggett informed you that the Clerk's Office does not have records matching the citations you provided in any of their books.

In her response, Ms. Leggett states that, in response to your request, she first checked in the microfilm department searching all naturalization records and could not locate the names of persons or volumes listed in your request and then, Chief Deputy Clerk Nana Navarro called the Indiana State Archives for assistance in responding to your request. Ms. Leggett indicates that

she informed you by telephone that you might check with the Crown Point, Indiana Historical Society, the Immigration and Naturalization Service or the Lake County reference library, but you had informed her that you had already checked at all of those locations. Ms. Leggett emphasized that she did in fact respond to your request, and had tried to assist you, but that the records you were seeking are not in the Clerk's Office.

ANALYSIS

The Access to Public Records Act defines public records as

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code α 5-14-3-2. The general rule under the Act is that any person may inspect and copy the public records of a public agency, except as provided under Indiana Code section 5-14-3-4, the exceptions to access when public records are either confidential or nondisclosable at a public agency's discretion. Ind. Code α 5-14-3-3(a). If a public agency has public records that are not confidential or otherwise nondisclosable, then such records must be disclosed in response to a public records request.

A public agency, however, cannot be expected to produce public records that are no longer maintained or retained by the agency. It appears that the books referenced in the 1981 Indiana Historical Society index were not maintained in county clerk's offices because the disclaimer on the cover of the index states that the index does not include information from books kept in clerk's offices. The Clerk's Office, therefore, did not violate the APRA by failing to produce the records requested.

Under the Indiana Rules of Court, circuit court clerks are required to "transfer any and all naturalization records immediately to the Archives Division, Indiana Commission on Public Records through the Division of State Court Administration." Administrative Rules of the Indiana Supreme Court, Rule 7. According to officials of the Indiana Commission on Public Records, many naturalization books have been transferred to the Archives Division. You may direct your request to that public agency at the following address: Indiana State Archives, Indiana State Library Building, 140 North Senate Avenue, Room 117, Indianapolis, Indiana 46204. You may also contact the Archives Division by telephone at (317) 232-3660.

CONCLUSION

It is my opinion that the Lake Circuit Court Clerk's Office did not violate the Access to Public Records Act by failing to provide access to public records that are not maintained in that Office.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Wanda Leggett, Supervisor
Lake Circuit Court Clerk's Office

¹ You have also included a copy of the model Indiana county recorders' record retention schedule. This schedule lists miscellaneous record books that may contain various legal documents as permanent records. This schedule if it has been adopted in Lake County, Indiana, or elsewhere by the local public records commission applies to miscellaneous record books in county recorders' offices, not county clerks' offices.