



# STATE OF INDIANA

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July 17, 2008

Michael Szarek  
DOC #173539  
4490 West Reformatory Road  
Pendleton, Indiana 46064-9001

*Re: Formal Complaint 08-FC-165; Alleged Violation of the Access to Public Records Act by the Clerk of the Lake County Circuit Court*

Dear Mr. Szarek:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Lake County Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk has denied you access to records in violation of the APRA.

## BACKGROUND

You allege that you have submitted repeated requests to the Clerk for copies of records related to cause number 45G04-0701-MR-00002. You enclose a copy of a court order sent to you by the Clerk. The order denied you access to records on the basis that you are represented by counsel. You submitted another request to the Clerk dated June 12, 2008. You filed this complaint on July 7.

The Clerk responded to the complaint by letter dated July 8. The Clerk contends the court order refuses your request on the basis that you are represented by counsel.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Clerk is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here, the Clerk contends that the court ordered denial of access to the records on the basis that you are represented by counsel. This issue was addressed by former public access counselor Karen Davis in *Opinion of the Public Access Counselor 04-FC-222*:

With respect to the Court's response to your request for all legal documents in cause number 49G058908CF096817, Commissioner Broyles's response that you were not entitled to records except through your attorney was not in accordance with the Access to Public Records Act. There is nothing in the APRA that would allow a public agency to deny a record on the basis that the requester must utilize his retained counsel or use formal court proceedings in order to get records. APRA stands [as] an independent means to obtain records, even where the requester is actively pursuing a court case.

*Id.*

I agree with the opinion of Counselor Davis. Nothing in the APRA provides an exception to disclosure based on the requester's representation by counsel. Since the APRA protects the right to access records outside trial discovery, access cannot be restricted because a requester is represented by counsel.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has denied you access to records in violation of the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Thomas Philpot, Clerk of the Lake County Circuit Court