



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

## PUBLIC ACCESS COUNSELOR

402 West Washington Street, Room W460  
Indianapolis, IN 46204-2745  
Telephone: (317) 233-9435  
1-800-228-6013  
FAX: (317) 233-3091  
[www.IN.gov/pac](http://www.IN.gov/pac)

September 19, 2005

Herbert S. Foust  
DOC # 124101  
Putnamville Correctional Facility  
1946 W. US Hwy 40  
Greencastle, IN 46135

*Re: Formal Complaint 05-FC-171; Alleged Violation of the Access to Public Records Act by the Clerk of the Circuit and Superior Courts of Porter County*

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Clerk of the Circuit and Superior Courts of Porter County ("Clerk") violated the Access to Public Records Act by failing to respond to your request for records within the statutory timeframe and by charging an excessive copying fee.

### BACKGROUND

Your complaint, filed with the Office of the Public Access Counselor on August 19, 2005, was accompanied by a copy of the Clerk's August 5, 2005 response to your request for records. The response stated that an advance payment of \$18.00 would be required to receive a copy of the entire file for the Foust dissolution.

The Clerk, Mr. Dale Brewer, responded to your formal complaint by letter dated August 23, 2005. A copy of that letter is enclosed for your reference. Mr. Brewer stated that your letter was not received until July 28, 2005. Mr. Brewer included a copy of the file stamped envelope showing that the letter was received on July 28, 2005. The envelope also bears a postmark for Indianapolis dated July 15, 2005. Mr. Brewer indicated that pursuant to IC 33-37-5-1(2)(b) he is required to collect one dollar per page. He indicated that there are 18 pages in the file.

### ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. IC 5-14-3-3(a). A public agency that receives a written request for a record via U.S. Mail, facsimile, or electronic mail is required to respond to the request in writing within seven (7) days of receipt of the request. IC 5-14-3-9(b).

The Clerk acknowledged that due to staffing cuts that he was one day late on his response. He apologized for the delay. It is regrettable that the Clerk did violate the APRA by sending the required response one day late. It appears that the Clerk believed that he was required to locate the file prior to responding to your request. For future reference, the Clerk may provide a response that acknowledges receipt of the request and that indicates to the requestor the action that the agency intends to take upon the request including a timeframe for when the requestor could expect to hear from the agency.

Additionally, you have complained that the copy fees charged by the clerk are excessive. Under the APRA, a public agency may charge a fee to copy a record. IC 5-14-3-8. Generally, a public agency may charge only for the actual cost of copying a record, which is defined in the APRA as the cost of paper and the per-page cost for use of the copying equipment. IC 5-14-3-8(d). However, the APRA states that a public agency shall collect any copying fee that is specified by statute or is ordered by a court. IC 5-14-3-8(f). Also, the APRA provides that an agency may require that the payment for copies be made in advance of the agency providing the copies. IC 5-14-3-8(d).

Ind. Code 33-37-5-1(b) provides that a court clerk shall collect a fee of one dollar (\$1) per legal size or letter size page for copying any record, including a page only partially covered with writing. The Clerk has stated that the record that you are seeking is 18 pages. Hence, the Clerk is required by statute to charge you \$1 per page, or \$18 for the record. Also, he is permitted to request payment in advance for this record. It is my opinion that the Clerk must charge you \$1 per page for the copy of the record that you are seeking, and did not violate the Access to Public Records Act by charging this fee or by requiring that you pay it in advance of receiving the record.

#### CONCLUSION

For the foregoing reasons, I find that the Clerk of the Circuit and Superior Courts of Porter County violated the Access to Public Records Act when he responded to your request for records 8 days after receiving your request. I find that the Clerk of the Circuit and Superior Courts of Porter County did not violate the Access to Public Records Act when he indicated to you that the per page cost of copying would be \$1.00 per page in accordance with IC 33-37-5-1(2)(b).

Sincerely,

Karen Davis  
Public Access Counselor

cc: Dale Brewer