

July 18, 2007

Jose Johnson
#170537
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-172; Alleged Violation of the Access to Public Records Act by the Clerk of Marion Circuit Court

Dear Mr. Johnson:

This is in response to your formal complaint alleging the Clerk of Marion Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying your request for records. A copy of the Clerk's response to your complaint is enclosed for your reference. I find the Clerk of Marion Circuit Court did not violate the APRA.

BACKGROUND

Your complaint alleges you submitted several requests to the Clerk for copies of the following records:

- “1. Transcripts of trial proceedings and sentencing Jan 22-23, 29-30
2. All docket sheet entries
3. Flat file, including all pleadings, motions and other papers filed or submitted for filing.
4. Complete copy of the Clerks [sic] record cause # 49G03-0606-FA-105631, also the clerks [sic] order book entries and minutes sheet.
5. I need everything that the court has pertaining to cause # 49G03-0606-FA-105631, depositions, protective orders, anything.”

By enclosing an affidavit of indigence, it appears have requested the Clerk to provide the requested copies to you at no cost. Your complaint, received on June 18, 2007 by this office, indicates you believe you should not have been denied free copies of these records by the Clerk.

The Clerk responded to your complaint on June 25, 2007 by letter from Ms. Teresa Hall, Chief of Staff. Ms. Hall indicates the Clerk is not responsible for transcription of digital recording of hearings. She further indicates Appellate Rule 10 outlines procedures by which a defendant may request such records. In response to your complaint regarding your request for flat file, clerk's record, order book entries, minute sheets, and "everything that the court has pertaining to . . .," Ms. Hall indicates her initial response to you may have been incorrect. Ms. Hall indicates that now rather than denying access, the Clerk is granting your request for these records and will provide copies if you choose to receive them at \$1.00 per page. In a letter to you dated June 25, 2007, Ms. Hall estimates the cost to be approximately \$300.

Finally, regarding depositions and protective orders you requested, Ms. Hall indicates protective orders, if denoted by "green" paper, are confidential under statute, and your request for such is denied. Ms. Hall indicates depositions are not public records maintained by the Clerk unless admitted into evidence at trial. As such, the Clerk does not have any documents responsive to this request.

ANALYSIS

The public policy of the APRA states that "(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." Ind. Code 5-14-3-1. The Clerk's Office is clearly a public agency for the purposes of the APRA. IC 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 the APRA. IC 5-14-3-3(a).

In this case, you requested copies of certain court records. Ms. Hall has since responded that you are granted access to the records upon payment of the copy costs. The APRA provides that public agencies may charge a copying fee. In most cases, local public agencies may only charge the actual cost, which means the cost of the paper and the per-page cost for the machine. IC 5-14-3-8(d). Public agencies may also request payment in advance for copies. IC 5-14-3-8(e).

There are instances, however, when the General Assembly has provided separate statutory authority for local officials to charge a copying fee different from the actual cost. IC 5-14-3-8(f). A county legislative body may adopt a fee schedule for copies of records in the Clerk's Office; copy costs must not exceed \$1.00 per legal size or letter size page. IC 33-37-5-1(c). The Clerk did not violate the APRA by notifying you of the copying fee for the records you requested.

By enclosing copy of an affidavit of indigence, I understand you claim to be entitled to at least one copy of a public record at no charge. There is no provision in the APRA entitling you to copies of public records at no charge. It is possible in some instances the General Assembly may have provided for fee waivers for copies of certain public records. Further, there are instances when a court will issue an order of indigence ordering an incarcerated person to receive copies of certain public records at no charge. In the case of your request to the Clerk, you did not

provide any statutory or other legal authority that would have authorized you to obtain copies at no charge.

Regarding the records you request that are not maintained by the Clerk, the Clerk has indicated the Office does not have any responsive records to your requests and has directed you to the appropriate place to find those records. Regarding any protective order associated with the listed cause number, Ms. Hall indicates any responsive records are confidential under Administrative Rule 9. Pursuant to 5-14-3-4(a), records declared confidential by state statute or by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute are excepted from disclosure.

CONCLUSION

For the foregoing reasons, I find the Clerk of the Marion Circuit Court did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Elizabeth White, Clerk of the Marion Circuit Court