

August 10, 2007

Micah Perryman  
PO Box 2222 M-421u  
Carlisle, Indiana 47838

*Re: Formal Complaint 07-FC-204; Alleged Violation of the Access to Public Records Act by the Clerk of the Elkhart Circuit Court*

Dear Mr. Perryman:

This is in response to your formal complaint alleging the Clerk of the Elkhart Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for access to public records. A copy of the Clerk's response to your complaint is included for your reference. I find that while the Clerk's response to your request may have been untimely, the Clerk did not otherwise violate the APRA.

#### BACKGROUND

You filed a complaint on July 11, 2007 (postmarked on July 9), alleging the Clerk violated the APRA by not responding to your request on or about June 22. You specifically requested a copy of the chronological case summary ("CCS") for a particular case. You allege that as of July 9 you had not received a response.

The Clerk submitted a response on July 16, indicating the office did receive your request dated June 15. The Clerk indicated that upon researching the issue with her staff she learned the CCS was mailed but no record of the response to your request was kept. As such, the Clerk has directed her staff to send you another copy of the CCS.

#### ANALYSIS

Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

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 non-disclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. IC §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. IC §5-14-3-9(b).

Here the Clerk has indicated she received your request dated June 15 but does not indicate the date of receipt. She further indicates she does not have a record indicating when the response and copy of the requested record was sent. But you have indicated that you had not received it as of July 9. If the Clerk did not send a response to you within seven days of receipt of your request, it was untimely under the APRA. A response is not required to contain the requested records; a response could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency, but previous public access counselors have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Since the Clerk does not have a record of when the CCS was sent to you, she has directed her staff to send you another copy.

#### CONCLUSION

For the foregoing reasons, I find that while the Clerk's response may have been untimely, the Clerk did not otherwise violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Stephanie Burgess, Elkhart County Clerk of the Circuit Court