

September 6, 2007

Richard Corbin
DOC #975153
PO Box 30
Pendleton, Indiana 46064

Re: Formal Complaint 07-FC-238; Alleged Violation of the Access to Public Records Act by the Clerk of the Supreme Court, Court of Appeals, and Tax Court

Dear Mr. Corbin:

This is in response to your formal complaint alleging the Clerk of the Supreme Court, Court of Appeals, and Tax Court (“Clerk”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by not responding to your request for records. The Clerk’s response is enclosed for your reference. I find that the Clerk did not violate the APRA.

BACKGROUND

You allege that by letter dated June 25, 2007 you requested from the Clerk copies of a particular opinion of the Supreme Court. You submitted your complaint on July 17, and I received it on August 7, alleging the Clerk had not responded to your request.

The Clerk responded to your complaint by letter from Heather Smith, Deputy Clerk, dated August 23. Ms. Smith first notes that your complaint named “Thomas Jones, Records Manager” as the person responsible for the denial, but the Clerk has no employee by that name, and the current Records Department Administrator has held the position for more than four years.

Ms. Smith further asserts that the Clerk did not receive your request. Ms. Smith also contends the Clerk has been ordered by the Supreme Court on December 6, 2005 to charge \$1.00 per page for copies of court records. Ms. Smith asserts that you did not include the copy fee with your request. Finally, Ms. Smith indicates that the record you seek can be obtained by requesting it, with copy fee enclosed, from the Records Department Administrator. Further, all opinions issued after January 1, 1999 can be found at on the Court’s website. The specific opinion you request is available at www.in.gov/judiciary/opinions/pdf/05170701trb.pdf.

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 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, the agency must respond to the request within seven days of receipt. I.C. §5-14-3-9(b).

A public agency shall collect any certification, copying, facsimile transmission, or search fee that is specified by statute or is ordered by a court. I.C. §5-14-3-8(f). A public agency may require that the payment for copying costs be made in advance. I.C. §5-14-3-8(e).

Here the Clerk's office asserts it did not receive your request. If the Clerk did receive your request, it would have a duty under the APRA to respond within seven days of receipt. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Clerk did not receive your request, it did not violate the APRA by not responding.

Regarding the fees charged by the Clerk for producing documents pursuant to a request, the APRA provides that a public agency shall collect fees ordered by a court. I.C. §5-14-3-8(f). The Supreme Court issued a published order regarding fees on December 6, 2005. The fee for the copies you requested is \$1.00 per page, which the Clerk may require in advance of providing the copies. I.C. §5-14-3-8(e). The Clerk has provided you with information regarding how you can obtain the records you seek either from the office or via the internet.

CONCLUSION

For the foregoing reasons, I find that the Clerk did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Heather Smith, Deputy Clerk