

September 6, 2007

Rebecca Crumes  
3044 Nichol Avenue  
Anderson, Indiana 46011

*Re: Formal Complaint 07-FC-246; Alleged Violation of the Access to Public Records Act by the Madison County Clerk*

Dear Ms. Crumes:

This is in response to your formal complaint alleging the Madison County Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not providing you access to records as quickly as you would have liked to receive them. A copy of the Clerk's response is enclosed for your reference. I find that the Clerk did not violate the APRA.

#### BACKGROUND

In your complaint you allege that on August 6, 2007 you requested records from the Clerk. Specifically you requested minutes of meetings of the Election Board as well as other election materials. The Clerk called you on August 7 to tell you the minutes of the last meeting had not been prepared and that she needed "a couple of days" to produce the records. She also informed you of the \$1.00 per page copy fee. You filed this complaint on August 15, alleging you have been denied access because you have not yet received the records.

The Clerk responded to your complaint by letter dated August 17. The Clerk affirmed the facts related to August 6 and 7 that you allege. She further adds that she called you again a few days later to tell you some of the documents you requested did not exist and you then clarified what you sought. The Clerk indicates she delivered the documents to you at your office on August 16.

#### 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 exempted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

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.

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 made when the requester is physically present in the office, the public agency must respond within 24 business hours. I.C. §5-14-3-9(a).

A response could be an acknowledgement that 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. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor’s office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, where the records are kept, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here you requested the records on August 6. The Clerk responded to your request on August 7, within the 24 hours allowed by the APRA. I.C. §5-14-3-9(a). The Clerk was under no obligation to produce the documents for you within 24 hours or even a few days as you seem to indicate you expected. The records must be produced in a reasonable amount of time, keeping in mind the Clerk has a duty to regulate any material interference with the regular discharge of functions or duties of the office. I.C. §5-14-3-7(a). I always suggest public agencies to estimate how long production might take and keep the requester informed if the request will take some time to fulfill. Here, the Clerk told you it would take some time to fulfill the request and called you at least twice in the intervening ten days between your request and production. It is my opinion this was a reasonable amount of time to produce the requested records.

#### CONCLUSION

For the foregoing reasons, I find that the Clerk did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Ludy Watkins, Madison County Clerk