

September 19, 2007

George Jackson
DOC #983947
Wabash Valley Correctional Facility
PO Box 2222
Carlisle, Indiana 47838

Re: Formal Complaint 07-FC-254; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Clerk of the Courts

Dear Mr. Jackson:

This is in response to your formal complaint alleging the Vanderburgh County Clerk of the Courts ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not responding to your request for records. A copy of the Clerk's response is enclosed for your reference. I find that while the Clerk's initial denial of access violated the APRA, the Clerk has now indicated she will make the record available to you.

BACKGROUND

In your complaint you allege you requested a copy of a marriage certificate and divorce decree from the Clerk on or about August 3. You filed your complaint August 20, and I received it August 22, alleging you were denied access to the record.

The Clerk responded to your complaint on August 23, indicating that while the person to whom the records you seek pertain is not the same person you believe her to be, the records you request are available to you. The Clerk apologized for not sending the records to you.

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 and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

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. I.C. §5-14-3-8(d). Public agencies may also request payment in advance for copies. I.C. §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. I.C. §5-14-3-8(f).

Here you requested copies of a particular “marriage certificate and divorce decree.” As I understand it, the Clerk denied your request but did not provide an exception to disclosure as required by the APRA. I.C. §5-14-3-3; I.C. §5-14-3-9. The Clerk has since indicated that while the record you seek is not related to the person you believe it to be, the record is available to you. The Clerk should now send you a copy of the record or should send you an invoice for the copy fee associated with the record and then send you the record upon receipt of payment.

CONCLUSION

For the foregoing reasons, I find that while the Clerk’s initial denial of access violated the APRA, the Clerk has now indicated she will make the record available to you.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Susan W. Kirk, Vanderburgh County Clerk of the Courts