

October 10, 2007

Ashley Bauer
123 Highway 72
Raton, New Mexico 87740

Re: Formal Complaint 07-FC-270; Alleged Violation of the Access to Public Records Act by the Jennings Superior Court

Dear Ms. Bauer:

This is in response to your formal complaint alleging the Jennings Superior Court ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to records. A copy of the Court's response to your complaint is enclosed. I find that the Court has not violated the APRA by failing to produce a record it does not maintain.

BACKGROUND

In your complaint you allege that you requested from the Court on September 7, 2007 copies of several records which would show you appeared before a judge and paid a fine of \$100 for what I understand to be a traffic violation. You allege the Court has indicated to you the records have been destroyed since the court no longer exists. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

Judge James Funke, Jr. responded to your complaint by letter dated September 11. Judge Funke contends the office of the Jennings County Clerk maintains your fine and payment records. Judge Funke further indicates the North Vernon City Court was abolished in 1997 when the Jennings Superior Court was created. Furthermore, the Jennings Superior Court does not maintain records of the North Vernon City Court.

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." I.C. §5-14-3-1. The Court 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 Court 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 “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.

Here you requested access to records related to a 1994 proceeding in which you were involved. If the Court maintained records of such proceedings, those records would be subject to inspection and copying under the APRA so long as no exceptions to disclosure are present. I.C. §5-14-3-3. The Court has indicated, though, it does not maintain records from the abolished North Vernon City Court.

The Court has directed you to the office of the Jennings County Clerk, which is the public agency responsible for maintaining court records. Judge Funke has indicated the Clerk does maintain the records you have requested. It is my recommendation you direct your request to the Clerk’s office.

CONCLUSION

For the foregoing reasons, I find that the Court has not violated the APRA by failing to produce a record it does not maintain.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Judge James Funke, Jr., Jennings Superior Court