

February 18, 2008

Jay Wright
416 Brooklea Drive
Fayetteville, NY 13066

Re: Formal Complaint 08-FC-42; Alleged Violation of the Access to Public Records Act by the Hamilton County Recorder

Dear Mr. Wright:

This advisory opinion is in response to your formal complaint alleging the Hamilton County Recorder ("Recorder") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by not responding to your request for records. It is my opinion the Recorder violated the APRA by not responding to your request.

BACKGROUND

You allege that you submitted a request for copies of records to the Recorder on December 30, 2007. You provide a copy of the return receipt from the United States Postal Service indicating the request was received by a Mary Clark on January 3, 2008. Receiving no response, you filed this complaint on January 23.

I sent a copy of your complaint to the Recorder and invited the Recorder to respond. I have not received a response to your complaint.

ANALYSIS

The public policy of the APRA states, "(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 Recorder 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 Recorder 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).

Here you have provided evidence that the Recorder's office received your request on January 3. The Recorder had a duty to respond to the request, even if the records you requested were not available from the Recorder's office. I.C. § 5-14-3-9.

CONCLUSION

For the foregoing reasons, it is my opinion the Recorder violated the APRA by not responding to your request.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Jennifer Hayden, Hamilton County Recorder

**February 19, 2008 Note: Today I have received a response from attorney Darren Murphy, written on behalf of the Recorder. Mr. Murphy indicates he responded to your request on January 18, 2008. I understand you have been communicating with Mr. Murphy regarding the request, and he has performed the search you requested. So while the Recorder's response was untimely under the statute (which requires the response within seven days of receipt), the Recorder has not otherwise violated the APRA.