

February 26, 2008

Joe McClain  
DOC #14421  
Wabash Valley Correctional Facility  
PO Box 1111  
Carlisle, Indiana 47838-2222

*Re: Formal Complaint 08-FC-48; Alleged Violation of the Access to Public Records Act by the Clerk of the Allen County Circuit and Superior Courts*

Dear Mr. McClain:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Allen County Circuit and Superior Courts ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by charging you an excessive fee for copies. The Clerk's response is enclosed for your reference. It is my opinion the Clerk did not violate the APRA.

#### BACKGROUND

You allege that by letter dated January 4, 2008 you requested from the Clerk copies of public records. You allege that the Clerk is charging you an excessive fee in the amount of \$2.00 for two pages. You submitted your complaint on January 25, and I received it on January 28.

The Clerk responded to your complaint by letter dated February 1. The Clerk contends the office is not a state agency and as such is not subject to the \$0.10 maximum copy fee established by I.C. § 5-14-3-8(c). Instead, the Clerk is subject to I.C. § 33-37-5-1(b), which requires the Clerk to charge \$1.00 per page for copies.

#### 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 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).

You allege that the Clerk is charging you excessive fees for copies of records the office maintains. The APRA provides that a public agency shall collect fees specified by statute or ordered by a court. I.C. § 5-14-3-8(f). The legislative body of a county to adopt a fee schedule of documents fees to be collected by the Clerk, and the per page fee may not exceed \$1.00. I.C. § 33-37-5-1. So long as the county legislative body has adopted a fee schedule setting the per page copy fee at \$1.00, the Clerk has not violated the APRA by charging this fee.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Therese Brown, Clerk of the Allen County Circuit and Superior Courts