



STATE OF INDIANA

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September 29, 2010

Michael J. Shepard
Putnamville Correctional Facility
1946 West U.S. Highway 40
Greencastle, IN 46135

Re: Formal Complaint 10-FC-195; Alleged Violation of the Access to Public Records Act by the Warrick County Clerk of Circuit Court

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Warrick County Clerk of Circuit Court ("the Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The Clerk's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you requested a copy of certain records from the Clerk on August 13, 2010. As of the date you filed your complaint on August 30, 2010, you had not received a response from the Clerk.

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 does not dispute that it is 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 Clerk's public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, 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 (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, if the Clerk failed to respond to your written request within seven (7) days, the Clerk violated section 9 of the APRA.

I understand that the Clerk first received notice of your request on August 18, 2010. The Clerk has indicated that she has made several attempts to fulfill your request. Due to your transition to another facility, the Clerk has been unable to send correspondence to you, causing a delay in the Clerk's response to your request. The Clerk has become aware of your new location and has now made available the remaining records you requested. I trust the Clerk's disclosure of the records it maintains resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk failed to respond to your written request within seven (7) days of receipt, the Clerk violated subsection 9(b) of the APRA. If the Clerk has now made available to you all records maintained by the Clerk, the Clerk has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Sarah E. Topper