



STATE OF INDIANA

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July 13, 2012

Mark A. Johnson
4111 W. Vernal Pike, Slot 174
Bloomington, Indiana 47404

Re: Formal Complaint 12-FC-148; Alleged Violation of the Access to Public Records Act by the Monroe County Circuit Court Clerk

Dear Mr. Johnson:

This advisory opinion is in response to your formal complaint alleging the Monroe County Circuit Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Clerk. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Clerk. The Clerk responded to your request and provided that you would need to submit a copy of your identification prior to the Clerk processing the request. You thereafter provided a copy of your identification. On June 1, 2012, you received correspondence from the Clerk, including a filed stamped copy of your request, but no further records. As of June 13, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you provide you have yet to receive any records in response to your request.

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." *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* 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 otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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, the Clerk responded in writing to your initial written request within seven (7) days of its receipts. As such, it is my opinion that the Clerk did not act contrary to section 9 of the APRA.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Without the benefit of a response from the Clerk, it is unclear to me if or why your request was denied. I would note that at the time of your request, you were located at the Putnam County Correctional Facility; however you currently reside in Bloomington, Indiana. It is possible that the Clerk has provided the records that were responsive to your request to the Facility. Subsequent to the filing of your formal complaint, if the Clerk has provided all records that were responsive to your request, it is my opinion it would have complied with APRA. However, under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Because the Clerk has not provided a justification for

withholding the records at issue here, it is my opinion that the Clerk has failed to sustain its burden under the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk has acted contrary to the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Linda Robbins