



STATE OF INDIANA

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December 15, 2014

Mr. Michael E. Bargo, Jr.
7320 Oriole Ave.
Chicago, IL 60631

Re: Formal Complaint 14-FC-303 (Consolidated); Alleged Violation of the Access to Public Records Act by the Porter County Treasurer, the Porter County Clerk of the Superior Court 4 and the Porter County Superior Court Recorder

Dear Mr. Bargo,

This advisory opinion is in response to your formal complaint alleging the Porter County Treasurer ("Treasurer"), The Porter County Clerk of Superior Court 4 ("Clerk") and the Porter County Court Recorder ("Recorder"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Treasurer has responded via Ms. Michelle Clancy. Her response is enclosed for your review. Recorder has not responded despite an invitation to do so on December 10, 2014. The Clerk has responded via Ms. Karen M. Martin. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor December 8, 2014.

BACKGROUND

Your complaint against the Court Recorder dated December 2, 2014, alleges the Porter County Court Recorder violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to produce required records.

Your complaint against the Clerk of the Porter County Superior Court 4, dated December 2, 2014, alleges the Clerk violated the Access to Public Records Act by failing to produce required records.

Your complaint dated December 7, 2014 alleges the Porter County Treasurer violated the Access to Public Records Act by failing to respond to your request in a timely manner.

On or about November 12, 2014 you submitted a public records request to the Court Recorder of Porter County Superior Court 4 seeking a copy of the complete transcript of

a hearing allegedly held on September 15, 2014. A Chronological Case Summary indicates the hearing was scheduled for September 19, 2014 and a Motion to Dismiss was filed on September 15, 2014. The Motion was granted without a hearing due to a deficiency in the complaint you filed initiating the lawsuit.

The Judge of Superior Court 4 issued an Order in response to your request stating that there was no transcript of a hearing on September 15, 2014, because the hearing did not take place.

On or about November 12, 2014 you submitted a Public Records Request to the Clerk of the Porter County Superior Court seeking several court files. You did not receive a response.

The Clerk responded to your complaint stating she never received your request; however, she addresses the four documents you sought in your November 12, 2014 request.

On or about November 12, 2014, you submitted a public records request to the Porter County Treasurer seeking dollar amounts paid to County attorneys. Your request was acknowledged on November 17, 2014. On December 1, 2014, the Treasurer responded by stating she did not have access to information regarding payments to the attorneys and you would need to follow-up with the County Auditor's Office. The Treasurer also responded to your complaint stating she provided everything in the custody of her office responsive to your request.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 Ind. Code § 5-14-3-1. The Porter County Treasurer, the Clerk of Superior Court 4 and the Superior Court 4 Court Reporter are public agencies for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy those public official's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 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 (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Court's Order served as acknowledgment of your request and denial due to the hearing being cancelled. Clearly a public agency is not obligated to produce records

which do not exist. Your grievance appears to be with the fact the hearing was cancelled and not necessarily because a public record does not exist. Please be advised this Office does not regulate or make recommendations as to judicial proceedings. Any remedial measure you seek would need to be addressed through the court system.

As for the documents requested from the Clerk, it appears as if everything that exists which is responsive to your request has been provided through her response. If the Clerk received your November 12, 2014 request, a proper acknowledgement should have been provided to you within seven (7) days and any documents produced within a reasonable time.

Based on the information provided, the Treasurer clearly acknowledged your complaint within seven (7) days of your request pursuant to Ind. Code § 5-14-3-9. Subsequently, the Treasurer denied your request within a reasonable time claiming the documents you seek do not exist. Indeed, without specifying which documents you are asking for (“dollar amounts paid” is not an identifiable public record), it is difficult to ascertain which records you are seeking. In any case, the Treasurer denies having the information you seek. It is beyond the scope of this Office to determine whether the Treasurer’s office should maintain the information you seek.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Porter County Treasurer and the Porter County Superior Court 4 Court Recorder have not violated the Access to Public Records Act. If the Clerk of the Porter County Superior Court 4 received your November 12, 2014 request, the Clerk has violated the Access to Public Records Act by not acknowledging receipt of your request within seven (7) days.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Karen M. Martin; Ms. Michelle Clancy