



STATE OF INDIANA

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April 22, 2016

Mr. Louis Fromer #241520
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, IN 47838

*Re: Formal Complaint 16-FC-54; Alleged Violation of the Access to Public Records Act by the
Tippecanoe County Clerk of the Courts*

Dear Mr. Fromer:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Clerk of the Courts ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Clerk has responded via Mr. Douglas J. Masson, Esq. The Clerk's 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 on March 10, 2016.

BACKGROUND

Your complaint dated March 8, 2016, alleges the Tippecanoe County Clerk of the Courts improperly denied your records request for audio recordings of grand jury proceedings in your criminal case.

On or about February 9, 2016, you submitted a public records request for a list of records associated with your criminal litigation. It was received by the Clerk on February 22, 2016. A personnel issue caused an inadvertent non-response on behalf of the Clerk. A second request was received by the Clerk subsequently on March 4, 2016 and responded on March 8, 2016. It appears as if your formal complaint to this Office and the acknowledgement from the Clerk to you crossed in the mail.

The Clerk concedes a failure to acknowledge your first request; however, the second response has advised you the Circuit Court would be the custodian of the records you seek and the appropriate public entity upon which to file 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 Ind. Code § 5-14-3-1. The Tippecanoe County Clerk of Courts is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk’s disclosable 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 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.

As for the timeliness of the acknowledgement to respond to your first request, the Clerk concedes an administrative error in failing to provide you with receipt of your public records request. While inadvertent, this still constitutes an omission of an important part of the public access process. The Clerk is encouraged to ensure proper staff coverage to handle access requests in the absence of the Clerk herself.

As for the second response, which does appear timely, the Clerk is correct the public records you seek are materials which are most likely in the possession of the Circuit Court which tried your case (the Court is a separate public agency from the Clerk’s Office). A public records request to that Court and the Court Recorder should result in a successful resolution to your search for records.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Tippecanoe County Clerk of Courts has violated the acknowledgement provision of the Access to Public Records Act, however, has remedied the omission with a subsequent response. Furthermore, no records have been denied by the Clerk who has provided direction as to the appropriate public agency upon which to serve your public records request.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Douglas J. Masson, Esq.