
OPINION OF THE PUBLIC ACCESS COUNSELOR

TIMOTHY W. ROBERTSON,
Complainant,

v.

GRANT COUNTY CLERK'S OFFICE,
Respondent.

Formal Complaint No.
17-FC-249

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Grant County Clerk's Office ("Clerk") violated the Access to Public Records Act¹ ("APRA"). Grant County Clerk Carolyn J. Mowery filed an answer to the complaint with this Office. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on November 1, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Timothy W. Robertson (“Complainant”) filed a formal complaint alleging the Clerk violated the APRA by wrongfully denying him access to public records.

Around October 24, 2017, Robertson submitted a written public records request to the Clerk seeking the following:

Robert Akins’ Chronological Case Summary: being the most recent events dealing with the arrests and Plea Agreements between the State and the Defendant Robert Akins from the year 2008 to 2011.

The Clerk returned the request with a yellow sticky note taped to the request stating the following:

I am sorry we can only give information on your cases. Thank you[.]

On October 27, 2017, Robertson filed a formal complaint with this Office.

On November 2, 2017, the Clerk filed a response to the complaint. The Clerk contends her office returned Robertson’s request because he failed to list a case number with the request, and her office does not do criminal searches. Further, the Clerk noted that when there are multiple cases it is time consuming to search through all of them and there may be multiple individuals with the same name.

Although the Clerk acknowledged that her deputy’s response to the request—at least the reason behind it— was not correct, she stated that the request would have been returned regardless.

ANALYSIS

Robertson contends that the Clerk violated the Access to Public Record Act (“APRA”) by wrongly denying him access to public records by providing him a deficient denial.

1. The Access to Public Records Act

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.” Ind. Code § 5-14-3-1. The Grant County Clerk’s Office is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n).

Therefore, unless an exception applies, any person has the right to inspect and copy the Clerk’s public records during regular business hours. Ind. Code § 5-14-3-3(a). APRA requires that all requests for inspection and copying identify with *reasonable particularity* the record being requested; and be, at the discretion of the agency, in writing on or in a form provided by the agency.

Further, a public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received or the request is considered denied. *See* Ind. Code § 5-14-3-9(c). An agency may deny a written request if the denial is made in writing or by fax, and the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title of the person responsible for the denial. *See* Ind. Code § 5-14-3-9(d).

Here, the Clerk contends that Robertson's request was returned because he did not list a case number for the records he wanted. Restated, the request lacked reasonable particularity as required by APRA. I agree. Even so, the Clerk—and by extension her staff—should be mindful that the denial provided in this case would undoubtedly violate APRA had Robertson provided a *reasonably particular* request.

As set forth *supra*, a public agency may deny a written records request if:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:
 - (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
 - (B) the name and the title or position of the person responsible for the denial.

Ind. Code § 5-14-3-9(d). Here, the denial is handwritten on a yellow sticky note that the Clerk's deputy taped to the original request and sent back to the requestor. There is no reference to the legal authority for withholding the requested records nor the name of the official responsible. This is not sufficient.

Because Robertson did not carry his burden of providing a reasonably particular request to the Clerk, I find no violation of APRA in this specific case. Replace Robertson's request with a sufficiently particular request, and I would have reached a different conclusion.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Grant County Clerk's Office has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor