OPINION OF THE PUBLIC ACCESS COUNSELOR

CHRISTIAN SHECKLER,
Complainant,

v.

ELKHART COUNTY CLERK
Respondent.

Formal Complaint No.
18-FC-84

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the Elkhart County Clerk ("Clerk") violated the Access to Public Records Act[1] ("APRA"). The Clerk filed a response to the complaint with this Office through attorney Michael F. DeBoni. In accordance with Indiana Code

[1] Ind. Code §§ 5-14-3-1 to -10

§ 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 30, 2018.

BACKGROUND

Christian Sheckler ("Complainant") claims the Elkhart County Clerk's office is using a procedure in which every request for criminal court records is being vetted through a presiding judge.

The Complainant does not identify a particular records request, but takes exception to the general practice of a county clerk running a records request through a judge for approval. He argues it creates unreasonable delays and is a barrier to access.

The Clerk argues the complaint is premature as the Complainant has not been denied access to a record and his request was acknowledged in a timely manner. Moreover, the Clerk argues a judge's review is appropriate to avoid the inadvertent release of confidential material.

ANALYSIS

1. The Access to Public Records Act ("APRA")

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 Elkhart County Clerk is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, 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).

It should be noted at the outset that both parties' arguments are well-received. The complaint is meritorious as the underlying alleged practice of vetting all requests to a clerk appears at first blush to add a layer of bureaucratic review to what should be a simple process.

On the other hand, it is true that some cases indeed contain sensitive material that is not appropriate for public inspection.

The Clerk of the Circuit Court is a constitutional administrative office. *See* Ind. Const. art VI, § 2(a). Although it is inextricably intertwined with the judiciary and is considered an office of the court, it is not a judicial office per se, but rather a separately elected position. The Clerk is the official custodian of the Court's judicial docket and other records germane to the Clerk's official duties under Indiana Code section 32-33. Administrative Rule 10 (A) is clear, however, that case records are the property of the judges presiding over a case, at least until they are transferred to the State Archives and Records Administration.

Indiana code section 5-14-3-3 states that a request for public records must be satisfied within a reasonable time. The term "reasonable time" is not defined by statute and indeed can be fluid on a case-by-case basis.

Bureaucratic mechanisms should not be implemented that create an unreasonable delay. It does stand to reason that a

Clerk's office may want to consult a judge in regard to a particular sensitive case to ensure the integrity of any expectation of privacy or confidentiality. That written, I am confident that the majority of county clerks are well-versed in recognizing that information and can make those decisions independently. Truth be told, there are very few instances when a record submitted in open court in a criminal case would meet a standard of confidentiality under the APRA or the Administrative Court Rules. Therefore, it is reasonable to conclude that most requests would not necessitate judicial review.

In the rare event a Clerk may require a judge's reassurance, however, it is not implicitly violative of the law to vet a request through a judge so long as it does not create an unreasonable delay in fulfillment of a record request.

All cases involved here are in excess of ten years old, lending credence to the notion that any harm to the adjudicative process is negligible. Confidential material, if any, would presumably be conspicuously marked as such, if not with green paper than with some other notation obvious to the Clerk.

Nevertheless, the practice is not prohibited, but I do suggest it be used sparingly and only when necessary to ensure the integrity of the records.

Luke H. Britt
Public Access Counselor