

February 19, 2001

Mr. Leon Hollingsworth
#994173 C-565
P.O. Box 41
Michigan City, IN 46361

Re: *Advisory Opinion 01-FC-10*; ;Alleged Denial of Access to Public Records by the Allen County Clerk's Office.

Dear Mr. Hollingsworth:

This is in response to your formal complaint, which was received on February 6, 2001. You have alleged that the Allen County Clerk's Office ("Clerk's Office") violated the Indiana Access to Public Records Act, ("APRA") Indiana Code chapter 5-14-3, by denying you access to public records. Specifically, you requested a copy of a sentencing transcript and received no response from the Clerk's Office. Ms. Lisbeth Blosser, Clerk of the Allen Circuit Court, responded in writing to your complaint on February 7, 2001. A copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Clerk's Office did not respond to you within the time period required under Indiana Code section 5-14-3-9(b) and that this failure to respond constituted a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, in a letter dated January 15, 2001, you requested a copy of a sentencing transcript for a specific defendant from the Clerk's Office. When you received no response from the Clerk's Office, you completed a formal complaint form on February 1, 2001 and mailed it to this Office alleging that you had been denied access under the APRA.

In response to your complaint, Clerk Blosser provided a copy of your request, which was received in her Office on January 22, 2001. She indicated that her Office, however, does not maintain such transcripts in the court files and that only court reporters can provide copies of transcripts upon request. She has forwarded your request to the appropriate court reporter for processing.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1. The Clerk's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to the information provided, it is apparent that you did not receive a response on or before January 29, 2001 because you executed your formal complaint form on February 1st. It is my opinion, therefore, that the Clerk's Office did not provide a timely response to your January 15th public records request and that this denial is actionable under Indiana Code section 5-14-3-9(d). As noted in her response, Clerk Blosser does not have the transcript you requested and it is commendable that she has afforded you the courtesy of passing your request along to the appropriate person for response.

CONCLUSION

It is my opinion that the Allen County Clerk's Office did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that this constituted a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: The Honorable Lisbeth Blosser

¹ You have also alleged that "100R" information you received from the Auditor's Office is not "true or

correct." This Office does not render opinions on the accuracy of public records, only on public access. Consequently, this Opinion will be limited to your allegations that you were denied access to public records.

² You contacted this Office in January on the very same issue on an informal basis. In writing this Opinion, I have included information I obtained during that prior contact in addition to the information provided with your formal complaint.