

August 6, 2001

Mr. Donald D. Slayton
#944663 (11B-4C)
P.O. Box 601
Pendleton, IN 46064

Re: Advisory Opinion 01-FC-40; Alleged Denial of Access to Public Records by the Greene County Clerk's Office.

Dear Mr. Slayton:

This is in response to your formal complaint, which was received on July 30, 2001. You have alleged that the Greene County Clerk's Office, ("Clerk's Office,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a written request for a copy of a policy and procedures manual and chronological case summary (CCS) from a court file. The Honorable Thomas Franklin, Greene County Clerk, responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the failure of the Greene County Clerk's Office to respond to your July 6th request for access to public records was a denial of access under Indiana Code section 5-14-3-9(b) that is actionable in court. If you did not make a specific enough request or if copying fees or a postage paid return envelope was required, the Clerk's Office should have advised you of this within the seven (7) days after receiving your request as is required under Indiana Code section 5-14-3-9(b).

BACKGROUND

According to your complaint, on July 6, 2001 you deposited your written request for copies from a case file in Greene County, specifically McGowan v. State, 28A05-9507-CR-289, 671 N.E.2d 872 (1996). Specifically, you asked for copies of an undercover officers' policy and procedures manual that was included in the record of proceedings for that case and a copy of the CCS. As of the date you filed your complaint, you had received no response from the Clerk's Office.

In response to your complaint, Mr. Franklin stated that he had no specific recollection of receiving your request. The typical procedure for handling public records requests in his Office is to locate the requested material, advise the person of the cost and ask the person to remit the copy fee with a stamped, self-addressed envelope. One exception to this process is that when the requestor is an appellant who has been found to be indigent by a court.

Mr. Franklin suggests that your request may not have been fulfilled because there are many McGowan

cases in their county and that without more information about which McGowan and the charges involved, there was no obligation for his Office to bear the costs of a search on your behalf. According to Mr. Franklin, if you did not receive the requested records, then it is likely that you did not provide enough information or did not provide the postage paid envelope or return address. Mr. Franklin does understand that the records you requested are disclosable public records and he will provide copies upon payment of any applicable copying fees.

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).

When a public records request is made, the requestor must make his or her request with reasonable particularity. Ind. Code § 5-14-3-3(a)(1). There is no Indiana case law defining "reasonable particularity," but the Florida courts have held that a public agency has the affirmative duty to notify the requestor if more information is needed in order to respond to the request. *Salvador v. City of Stuart, No. 91-812 CA (Fla. 19th Cir. Ct., December 17, 1991.)* Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request. *See generally*, Ind. Code § 5-14-3-1.

It is also 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. For requests that are delivered by mail, 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 facts as presented, it appears that the Clerk's Office probably received your request, but may not have acted upon it for a number of reasons. It is my opinion that if the Clerk's Office received your July 6th request, you should have received a response within seven (7) days of that request. If you did not provide enough information for the Clerk's Office to locate the case file in

question, that should have been communicated to you. Further, if you did not include the requisite copying fee or postage paid return envelope that too should have been communicated to you. Certainly, the Clerk's Office may seek clarification of public records requests and ask for copying fees in advance of providing copies, but the public agency bears the burden of informing the requestor of these facts and should not just ignore any request that does not meet these standards. *See*, Ind. Code §5-14-3-8(e)(2).

CONCLUSION

It is my opinion that the Greene County Clerk's Office denied you access to public records under Indiana Code section 5-14-3-9(b) when they failed to respond to your July 6, 2001 request for access to public records. This denial is actionable in court. Further, if the Clerk's Office needed more information, a copying fee paid in advance or postage paid return envelope in order to comply with your request, you should have been advised of these deficiencies.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable Thomas Franklin, Clerk

Greene County Clerk's Office

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