

November 21, 2002

Mr. Larriante J. Sumbry
#965137 C-455
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-59*; Alleged Denial of Access to Public Records by the Lake County Clerk's Office.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on November 6, 2002. You have alleged that the Lake 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 the Clerk's Office denied you access to public records by failing to respond to your October 16, 2002 request. Ms. Wanda Leggett, Supervisor, responded in writing to your complaint. 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 respond to you within the time period required under Indiana Code section 5-14-3-9(b), therefore the Clerk's Office did not violate the APRA with respect to your public records request.

BACKGROUND

According to your complaint, you sent a request to the Clerk's Office dated October 16, 2002. You asked for the omnibus hearing transcripts, transcript of a September 9, 2002 hearing, police file, name of the special judge and person in charge of the Lake County Internal Affairs. You apparently¹ addressed your request to Ms. Leggett. You had not received a response as of October 31, 2002, so you then filed your formal complaint with this Office.

In response to your complaint, Ms. Leggett indicated that you had directed your request to her in error as she supervises the Civil, not Criminal Division of the Clerk's Office. In any event, she informed us that your request was not received by the Clerk's Office until November 1, 2002 and that a response was sent to you on November 6, 2002.

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." 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 by U.S. Mail 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, the Clerk's Office did not receive your request until November 1, 2002 and their response was sent to you within the seven (7) days contemplated under Indiana Code section 5-14-3-9(b). For this reason, it is my opinion that the Clerk's Office did not violate the APRA with respect to your October 16, 2002 request.

CONCLUSION

It is my opinion that the Lake County Clerk's Office did 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). Consequently, there was no violation of the APRA with respect to your October 16, 2002 request for access to public records.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Wanda Leggett, Clerk's Office

¹ You did not provide a copy of your request to this Office, this is based only on the information provided in your complaint form.