
OPINION OF THE PUBLIC ACCESS COUNSELOR

MARK J. STEVENS,
Complainant,

v.

CLARK CNTY. CLERK OF THE CIRCUIT COURT,
Respondent.

Formal Complaint No.
23-FC-82

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the Clark County Clerk of the Circuit Court violated the Access to Public Records Act.¹ Attorney R. Scott Lewis filed an answer on behalf of the clerk. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 28, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case we address access to executed search warrants and how the Access to Public Records Act intersects with the Indiana Rules on Access to Court Records.

On August 23, 2023, Mark Stevens (Complainant), investigative reporter for WAVE-TV, filed a public records request with the Clark County Clerk of the Circuit Court (Clerk) seeking search warrants executed on seven identified properties and the associated affidavits.

The next day, the Clerk denied Stevens' request in accordance with Rule 5(A)(5) of the Indiana Rules on Access to Court Records.

In a request for reconsideration, Steves cited Administrative Rule 9 (which previously governed access to court records) and two prior opinions from this office, including a portion of the PAC Handbook. Even so, Clark County attorney Scott Lewis reiterated the rationale for the denial.

As a result, Stevens filed a formal complaint with this office.

On September 18, 2023, the Clerk filed a response to Stevens' complaint. The Clerk argues that under the Indiana Rules on Access to Court Records—specifically Rule 5(A)(5)—the denial was appropriate. The Clerk also explained that the authority Stevens was relying upon was outdated.

ANALYSIS

1. The Access to Public Records Act

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 Clark County Clerk of the Circuit Court (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).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

This case involves the intersection of APRA with the Indiana Rules on Access to Court Records.

2. Supreme Court Rules

APRA does not expressly address every public record that exists. When not explicitly listed, APRA defers to other code provisions or in this case, rules of other branches of government.

Notably, APRA exempts from disclosure those records declared confidential by the Indiana Supreme Court. *See* Ind. Code § 5-14-3-4(a)(8). Toward that end, the Indiana Supreme Court created the Indiana Rules on Access to Court Records (ACR) in 2019 replacing Administrative Rule 9.

The newest version of the ACR took effect on January 1, 2022.² Additionally, the judiciary publishes a Public Access to Court Records Handbook. These updated authorities, like amended statutes, supersede prior PAC guidance, which may have cited older versions of the rules.

When evaluating requests for access to judicial public records, this office cites these authorities as binding in conjunction with APRA.

3. Search warrants

In this case, the question is whether executed search warrants are disclosable and whether the judiciary has updated its rules accordingly.

In terms of public records, search warrants can take two distinct forms. The first is when a warrant is served but not made part of a public record. The second is an executed warrant that becomes part of an underlying or subsequent criminal case. There are two standards for disclosure accordingly.

A.C.R. 5(A)(5) states the following:

Entire cases that exclusively pertain to investigative requests and process unrelated to a pending criminal proceeding, including but not limited to search warrants, subpoenas ad testificandum, subpoenas duces tecum, and other investigative requests;

Procedurally, these are typically filed as miscellaneous (MC) cases on the docket. These types of cases are not subject to

² <https://www.in.gov/courts/rules/records/index.html> .

the statutory presumption of openness in criminal proceedings.

The judiciary's *Public Access to Court Records Handbook* advises similarly:

Search warrants that are not filed within an existing prosecution, remain confidential unless the court authorizes public access.³

Warrants can also be temporarily sealed by a court in limited circumstances.

Conversely, if a search warrant has been issued, executed, and becomes part of an underlying criminal case, it is presumptively open so long as the court has not temporarily sealed it in accordance with the law.

Here, we have seven properties that Stevens identifies as having executed search warrants, but the Clerk has denied access to the warrants and associated affidavits because there was not an underlying criminal proceeding. So long as this is accurate, and we have no reason to question the veracity of the Clerk's statements, the Clerk has an obligation to withhold the records.

³ *Public Access to Court Records Handbook*, p.48., Q21., (2023).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Clark County Clerk had justification to withhold the records in question.

To the extent this opinion is inconsistent with prior PAC opinions analyzing outdated authority, this opinion supersedes those positions.



Luke H. Britt
Public Access Counselor

Issued: November 2, 2023