



STATE OF INDIANA

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September 15, 2008

Michael Jack Stephens
128 Pinto Way
Bloomington, Indiana 31302

Re: Formal Complaint 08-FC-205; Alleged Violation of the Access to Public Records Act by the Clerk of the Marshall Circuit and Superior Courts

Dear Mr. Stephens:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Marshall Circuit and Superior Courts ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk has not violated the APRA.

BACKGROUND

You mailed your complaint on September 3, 2008, and my office received it on September 9. It is my understanding you requested copies of records by letter dated August 20. The Clerk responded to the request by letter dated August 27. The Clerk indicated the office did not locate on the filing report a match for the criteria you provided for the cases you requested. Further, you requested a list of all "NON custodial criminal cases," and the Clerk's office indicated further clarification on that term is needed.

The Clerk responded to the complaint by electronic mail message dated September 9 from Karen, the Marshall County Records Deputy. The message reiterated what was provided to you in the August 2 letter, that no match was located for the specific cases you requested and that the Clerk's office cannot respond to the second request without further clarity.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Clerk is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of

the Clerk during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for inspection and copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a)(1). I recently addressed the issued of reasonable particularity in *Opinion of the Public Access Counselor 08-FC-176*:

“Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. Ct. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007.

In my opinion, when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity. See *Opinions of the Public Access Counselor 08-FC-135, 07-FC-353*. While you may know which records you seek, and while you may believe the District knows which records you seek, the request must still identify the records with reasonable particularity, as required by I.C. § 5-14-3-3(a). If a request is not made with reasonable particularity and an agency attempts to provide the records the agency’s employee thinks the requester is seeking, it is likely the agency could misinterpret the request and provide too many records, not enough records, or the incorrect records. For instance, I often hear from agencies that a person has requested “all records related to expenses” for a certain amount of time. What the requester generally does not understand is just how many records related to “expenses” an agency might maintain. In this example, an agency might maintain copies of checks, bank statements, ledgers, budget worksheets, approved budgets, claim vouchers, supply orders, internal memoranda related to orders for supplies, and any number of other records. It is my advice to agencies in this situation that the agency ask the requester to identify with reasonable particularity which expense records he or she is seeking.

Id., available at http://www.in.gov/pac/advisory/files/formal_opinion_08-FC-176.pdf

Here, you have requested a list of all “NON custodial criminal cases” in all Marshall county courts. The Clerk has requested more clarity on this term in order to fulfill your request. In my opinion, the Clerk has not denied you access to the records.

Instead, the Clerk seeks clarification as to which records you seek. Even though you may know which records you seek, it is apparent the Clerk cannot ascertain which records you are requesting from the description you provided. It is my suggestion that you provide further clarification to the Clerk so the Clerk may fulfill your request if the office maintains the records you identify.

Regarding the Clerk's indication that the office cannot locate any match on the filing report for the cases you requested, an agency cannot provide access to records it does not maintain. While the Clerk is obligated to provide you access to public records the office maintains, the Clerk cannot provide you access to records the office does not maintain or which cannot be located based on the criteria you have provided.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Clerk of the Marshall Circuit and Superior Courts