

March 12, 2008

Lorenzo Borders, DOC #946042
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 08-FC-59; Alleged Violation of the Access to Public Records Act by the Clerk of the Elkhart Circuit Court

Dear Mr. Borders:

This advisory opinion is in response to a formal complaint filed by you alleging the Clerk of the Elkhart Circuit Court ("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 your complaint is enclosed for your reference. It is my opinion the Clerk did not violate the APRA.

BACKGROUND

You allege you requested from the Clerk a copy of two probable cause affidavits related to your arrest and prosecution in Elkhart County. You allege that on February 5, 2008 the Clerk denied you access to the records. You mailed this complaint on February 11, and I received it on February 19.

The Clerk responded to your complaint by letter dated February 20. The Clerk indicated she received your request on January 23 and prepared and mailed the requested records the same day. The Clerk received a second request from you on February 4 and prepared and mailed the records the following day. Noting the records had previously been sent to your counsel, the court on February 4 denied your request even though the records had been sent. Further, there was no hearing for probable cause on February 1, 1994, a hearing to which you referred in your request. On February 6 the Clerk received a third request from you for the same information.

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's office is clearly a public agency for the purposes of the APRA. I.C. § 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 the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. I.C. § 5-14-3-9(b).

Here, you have repeatedly requested copies of the same court records. The Clerk has provided copies of the same documents to you at least twice. The APRA requires a response to a request for access to records within seven days of receipt of the request when the request is made by mail. I.C. § 5-14-3-9(b). All evidence provided by the Clerk in response to your complaints indicates the Clerk has responded to each of your several requests well within the seven days required by the APRA.

The Clerk contends you continue to request records which do not exist. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

Regarding your repeated requests for the same records, the Clerk has provided you with the records the Clerk maintains which are responsive to your request. While an individual is entitled to a copy of a record if the public agency has reasonable access to a copy machine, the agency is not required to produce more than one copy. I.C. § 5-14-3-8(e). As such, the Clerk is not obligated to continue to provide you with additional copies of the same records.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk of the Elkhart Circuit Court did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Stephanie Burgess, Clerk of the Elkhart Circuit Court