



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 19, 2012

Rocky M. Shroyer
DOC 956193
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 12-FC-150; Alleged Violation of the Access to Public Records Act by the Delaware County Clerk's Office

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Delaware County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Delaware County Clerk Steven G. Craycraft responded in writing to your formal complaint. His response is enclosed for your reference

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Clerk for a copy of the complaint filed under Cause No. 18-C01-9907-CP-0284. On May 14, 2012, the Clerk responded in writing to your request and provided that the case file had been destroyed pursuant to the applicable retention schedule. You believe that the Court's order only allowed for the destruction of physical evidence that had been presented at the hearing or trial, not the entire case file.

In response to your formal complaint, Mr. Craycraft advised that on July 9, 2007 the case was dismissed by the Delaware Circuit Court with prejudice. Pursuant to Indiana Administrative Trial Rule 7 85/1.1-26R, civil cases designated as CP can be destroyed two years after dismissal. The only exception would be if relief had been granted under Ind. Trial Rule 60(b), which is not applicable here. The applicable State Court Administrative Rule regarding case retention for civil cases is (a) those dismissed before trial can be destroyed two years after dismissal, or (b) those dismissed during or after trial can be destroyed two years after order to dismiss is given under Trial Rule 41. As such, the case file could have been destroyed on July 9, 2009; however, the case was not actually purged and destroyed until May 2012, three years longer than what was required under Rule.

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.” *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Clerk’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The Clerk has advised that the information you requested from Cause No. 18-C01-9907-CP-0284 was purged and destroyed in May 2012. The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). Indiana Administrative Rule 7/ 85-1.1-26R provides that dismissed civil cases files designated as CP, that are dismissed prior to trial, may be destroyed two years after dismissal. Here, the civil case was dismissed with prejudice, prior to trial, on July 11, 2007. You have made no indication that relief had ever been granted under Indiana Trial Rule 60(B). Thus, pursuant to the State Court Administrative Rule 7, the Clerk was able to destroy the civil case file after July 7, 2009. As the Clerk has indicated that the file was not destroyed until May 2012, it is my opinion that the Clerk did not violate the APRA



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CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Steven G. Craycraft