

April 30, 2008

Ricky Tobar  
DOC #995163  
PO Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 08-FC-92; Alleged Violation of the Access to Public Records Act by the Saint Joseph County Clerk of the Courts*

Dear Mr. Tobar:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Clerk of the Courts ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Clerk has violated the APRA if the office did not respond to the request within seven days.

#### BACKGROUND

In your complaint you allege that you submitted a request for access to records to the Clerk on March 10, 2008. Receiving no response, you mailed this complaint on April 7, and I received it on April 10.

My office forwarded a copy of the complaint to the Clerk and invited the Clerk to provide a response to the complaint. To date we have not received a response to the complaint.

#### 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. 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 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 and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

You allege you mailed your request to the Clerk on March 10, 2008. Pursuant to the APRA, the Clerk should have responded to the request within seven days of receipt of the request. I.C. § 5-14-3-9(b). If the Clerk's office did not receive the request, the Clerk would not be obligated to respond. But because the Clerk did not respond to the complaint at my invitation to do so, I have no information regarding whether the Clerk received the request. As such, it is my opinion that the Clerk violated the APRA if the office did not respond to the request within seven days of receipt.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk violated the Access to Public Records Act if the office did not respond to the request within seven days of receipt.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Rita Glenn, St. Joseph County Clerk of the Courts