

January 25, 2002

Mr. Eric Mills
DOC # 915793
Location F-206-u
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: *Advisory Opinion 01-FC-80*;
Alleged Denial of Access to Public Records by the Delaware County Recorder's Office.

Dear Mr. Mills:

This is in response to your formal complaint, which was received in this Office on December 27, 2001. You have alleged that the Delaware County Recorder's Office ("Recorder's Office") violated the Indiana Access to Public Records Act ("APRA"), Indiana Code section 5-14-3. Specifically, you alleged that the Recorder's Office failed to respond to your public records request dated December 12, 2001. Mr. Al Marlow, Delaware County Recorder, responded via telephone to your complaint¹. For the reasons set forth below, it is my opinion that the Recorder's Office did not violate the APRA with respect to your December 12, 2001 public records request.

BACKGROUND

According to your complaint, on December 12, 2001 you mailed a public records request to the Recorder's Office requesting various public records including:

1. A copy of your grandfather, Jim Mills' death certificate;
2. a of his will; and
3. a copy of the legal proceeding that followed pertaining to his will.

As of the filing of your complaint, you allege that you had received no response from the Recorder's Office.

In the discussion I had with Mr. Marlow on January 7, 2002, Mr. Marlow indicated that he did respond to your request. Mr. Marlow indicated that you provided an incorrect address on your request, and that his response to your request was returned to him. As far as the items you requested on December 12, 2001, in my conversation Mr. Marlow indicated that the Recorders's Office does not maintain those records.

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. Ind. Code § 5-14-3-1. The Recorder's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it appears that the Recorder's Office did attempt to respond to your public records request, however, the response was returned because you had provided an incorrect address. It is my opinion, therefore, that the Recorder's Office did not violate the APRA with respect to your public records request of December 12, 2001. Mr. Marlow did, however, in my discussion with him on January 7, 2001 indicate that the records you are seeking are not maintained in the Recorder's Office.

CONCLUSION

It is my opinion that the Delaware County Recorder's Office did not violate the Access to Public Records Act with respect to your December 12, 2001 request for public records because the Recorder's Office attempted to respond to your request but you provided the Recorder's Office with an incorrect address.

Sincerely,

Sandra K. Barger
Staff Attorney

Enclosure

cc: The Honorable Al Marlow, Delaware County Recorder

¹ Your complaint listed Ms. Phyllis Marlow as the Delaware County Recorder, however, the current Delaware County Recorder is Mr. Al Marlow.