



STATE OF INDIANA

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February 2, 2011

Mr. Glen F. Arvin
311A Kent St.
Odon, IN 47562

Re: Formal Complaint 11-FC-06; Alleged Violation of the Access to Public Records Act by the Daviess County Clerk

Dear Mr. Arvin:

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

BACKGROUND

According to your complaint, you allege the Clerk violated the APRA by denying you access to "200 of 300 pages of [an] Estate [file] marked confidential...." The withheld information contained "[a]ssets, expenses, [and] distributions to heirs," and you argue that not all of that information should be confidential.¹

In response to your complaint, the Clerk maintains that the withheld records are confidential under Ind. Code § 6-4.1-12-12. The Clerk notes that she has released to you all non-confidential portions of the Cecelia Kavanaugh estate, which you viewed via microfilm.

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."

¹ Your complaint also references an "Auditor Office," which I assume refers to the Daviess County Auditor. Because you did not name the Auditor as a respondent in your complaint, however, I decline to address those allegations herein. If you have a complaint against another agency, you are free to file an additional complaint and I will be happy to address it accordingly.

I.C. § 5-14-3-1. The Clerk is 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 Clerk's public records 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).

The APRA states that a public agency may not disclose records that are "declared confidential by state statute." I.C. § 5-14-3-4(a)(1). Ind. Code § 6-4.1-12-12 is a state statute that provides that "any other person who gains access to ... inheritance tax files shall not divulge any information disclosed by the documents required to be filed under this article." *Id.* The "information . . . required to be filed under this article" is listed in another section of the Probate Code:

Inheritance tax return; filing time; contents

Sec. 1. (a) Except as otherwise provided in section 0.5 of this chapter or in IC 6-4.1-5-8, the personal representative of a resident decedent's estate or the trustee or transferee of property transferred by the decedent shall file an inheritance tax return with the appropriate probate court within nine (9) months after the date of the decedent's death. The person filing the return shall file it under oath on the forms prescribed by the department of state revenue. The return shall:

(1) contain a statement of all property interests transferred by the decedent under taxable transfers known to the person filing the return;

(2) indicate the fair market value, as of the appraisal date prescribed by IC 6-4.1-5-1.5, of each property interest included in the statement;

(3) contain an itemized list of all inheritance tax deductions claimed with respect to property interests included in the statement;

(4) contain a list which indicates the name and address of each transferee of the property interests included in the statement and which indicates the total value of the property interests transferred to each transferee; and

(5) contain the name and address of the attorney for the personal representative or for the person filing the return.

(b) If the decedent died testate, the person filing the return shall attach a copy of the decedent's will to the return.

I.C. § 6-4.1-4-1. Pursuant to Ind. Code § 6-4.1-12-12, the Clerk may not release any of the information or records listed therein, including "a statement of all property interests" and an indication of "the fair market value . . . of each property interest." Here, the Clerk states that the records she withheld in response to your request consisted of the Report of Appraiser and Order Determining Inheritance Tax Schedule of Property, which both fall within the type of record that is classified as confidential under these provisions. Accordingly, it is my opinion that the Clerk did not violate the APRA by denying your request to the extent that it sought access to those confidential records.

I note that the aforementioned provisions contain several exceptions to the confidentiality requirements for certain classes of requesters, including heirs. *See* I.C. § 6-4.1-12-12(a)(1) - (11). However, nothing before me indicates that you qualify for access to the records under one of those provisions. If you can demonstrate to the Clerk that you do meet one of those criteria, the Clerk should provide you access accordingly.

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 that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Sherri L. Healy