



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

July 25, 2016

Mr. Aaron D. Spurling, Esq.
12210 Driftstone Drive
Fishers, Indiana 46037

Re: Formal Complaint 16-FC-152; Alleged Violation of the Access to Public Records Act by the LaPorte County Clerk's Office

Dear Mr. Spurling:

This advisory opinion is in response to your formal complaint alleging the LaPorte County Clerk's Office ("Office") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office responded via Ms. Lynne Spevak. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 25, 2016.

BACKGROUND

Your complaint dated June 27, 2016, alleges the LaPorte County Clerk's Office violated the Access to Public Records Act by failing to provide you the opportunity to view public records, which the office only keeps on microfilm.

On June 21, 2016 you visited the Michigan City Superior Courthouse in order to view files from five (5) specific civil cases. When you arrived, you were informed that as soon as a judgment is entered in a civil case, the file is microfilmed and the physical file is destroyed. All five (5) of the case files you sought to review had already been converted to microfilm. Furthermore, you were told the microfilm reader owned by the courthouse is not for public use and the only way you could review the files would be to request copies at a cost of \$1.00 per page.

In its response, the Office asserts it received multiple verbal complaints from the Fire Marshall the building held too many paper files.

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 Indiana Code § 5-14-3-1*. The LaPorte County Clerk’s Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

In addition to the requirements established by the APRA, the Office is also required to comply with the Indiana Administrative Rules. Rule 9(D) requires a court record be accessible to the public, regardless of the form in which the record is maintained. In most instances, Section G(5)(b) requires filing or tendering of both a Public Access version and a Non-Public Access version of all court records.

Here, the Office converts all files in which a judgment has been entered to microfilm. The Office does not permit members of the public to utilize its one microfilm reader. In lieu of viewing the microfilm, the Office offers to provide requesting members of the public with copies of court records at a fee of \$1.00 per page. The Office asserts this is necessary in order to ensure it complies with the Ind. Admin. R. 9(G) requirement confidential information be redacted to protect the privacy of individuals involved in litigation.

The Administrative Rules require the maintenance of a Public Access version of all court records. *See Ind. Admin. R. 9(G)(5)(b) and Commentary*. Based upon the Office’s response, it would appear it is not following these requirements. The Office should not have to print a physical copy and then perform redactions in order to allow the public to inspect the court record. To perform this process at a cost of \$1.00 per page acts to chill public access, especially when a single case file may contain hundreds of pages.

It is important to note record retention is regulated by the Indiana Administrative Rules. While microfilm is a generally acceptable alternative to storing physical copies, Rule 6(A) states only records or record series which have been approved for microfilming under Administrative Rule 7 shall be eligible for microfilming. Additionally, Rule 6(G)(1)(a)(i) requires the clerk obtain and retain documentation granting authority to microfilm specific records. Microfilming all records is not authorized, because the cost of microfilming exceeds the costs of storage for the duration of the retention period; however, special circumstances for microfilming may be authorized by the Division of State Court Administration. *See Ind. Admin. R. 7(B)*. This office is unaware of the exact identity of the types of files sought here, and therefore cannot determine whether the records are being stored appropriately.

The Office notes in its response it uses a variety of software for remote access to documents. While there is a public access site with Odyssey, it does not include the entire court record. The Office also has a contract with BOLT, which allows scanned files to be viewed remotely; however, the Office is still working with BOLT to exclude confidential pages and the public currently has no access to this option. Because these remote access sites do not contain the complete court record for public review, they cannot serve as meeting the Rule 9 Public Access version requirement.

I strongly encourage the LaPorte County Clerk’s Office to maintain a Public Access version of court records as required by Rule 9. Additionally, the Office should consider permitting members of the

public to use its microfilm reader to meet the accessibility requirements established by the Indiana Supreme Court.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the LaPorte County Clerk's Office violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Ms. Lynne Spevak