

August 21, 2001

Mr. Donald D. Slayton
#944663
P.O. Box 601
Pendleton, IN 46064

Re: Advisory Opinion 01-FC-43; Alleged Denial of Access to Public Records by the Clerk of the Supreme and Appellate Courts.

Dear Mr. Slayton:

This is in response to your formal complaint, which was received on August 10, 2001. You have alleged that the Office of the Clerk of the Supreme and Appellate Courts ("Clerk's Office,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a request for a copy of a policy manual that was included in an appellate record and received no response to your request. The Honorable Brian Bishop, Clerk responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that it appears that the Clerk's Office did respond to your request for access to public records within the appropriate time frame set forth at Indiana Code section 5-14-3-9(b).

BACKGROUND

According to your complaint, on July 2, 2001 you mailed a request to the Clerk's Office requesting a copy of the State Police Undercover Officers Manual that was included in a record or proceedings for McGowan v. State, 617 N.E.2d 872. You alleged that as of the date of your formal complaint, you had been denied access to public records because you had not received any response from the Clerk's Office.

In response to your complaint, Clerk Bishop contacted you directly in a letter dated August 13, 2001. According to his letter, his Office records indicate that within a day or two of receiving your request, his staff did contact you in writing asking for more specific information on the McGowan case you referenced because they have several with that caption. Apparently, you never provided any specific direction to the Clerk's Office and they did not hear anything from you until they received your formal complaint through this Office. In any event, Clerk Bishop informed you in his August 13th letter that they believe they may have located the appropriate McGowan case for you. Clerk Bishop has advised you that once you provide them with the copying fee of \$87.00, payable to the Clerk of the Indiana Supreme Court, his Office will produce the requested public records.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function

of a representative government and 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Clerk'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 Clerk's Office 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).

When a public records request is made, the requestor must make his or her request with reasonable particularity. Ind. Code § 5-14-3-3(a)(1). There is no Indiana case law defining "reasonable particularity," but the Florida courts have held that a public agency has the affirmative duty to notify the requestor if more information is needed in order to respond to the request. *Salvador v. City of Stuart, No. 91-812 CA (Fla. 19th Cir. Ct., December 17, 1991.)* Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request. *See generally*, Ind. Code § 5-14-3-1.

It is also the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. 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 in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to the facts as presented, it appears that the Clerk's Office did provide a response to your request within the time period provided under Indiana Code section 5-14-3-9(b). For some reason, it is possible that you may not have received this response, but the Clerk's Office does not send such correspondence by certified mail so there was nothing to indicate to that Office that you had not received their response. A response that the Clerk's Office needed additional information to locate the particular McGowan case in question was an appropriate response under the APRA. The burden falls upon the public agency under the APRA to respond to requests and to notify a requestor, if necessary, that the request is not particular enough to permit them to locate the public records requested.

While they are still uncertain about the particular case you referenced in your request, the Clerk's Office has located a file that appears to satisfy your request. Upon payment of the copying fee in advance, which is permissible under Indiana Code section 5-14-3-8(e), the Clerk's Office will provide the copies to you.

CONCLUSION

It is my opinion that it appears that the Office of the Clerk of the Supreme and Appellate Courts did respond to your request for access to public records within the appropriate time frame set forth at Indiana Code section 5-14-3-9(b).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable Brian Bishop,
Clerk of the Supreme and Appellate Courts

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