

July 17, 2003

Mr. Larry Lampkins, 970776  
Location A-550  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

Re: *Advisory Opinion 03-FC-49*: Alleged Denial of Access to Public Records by the Clerk of the Circuit Court of Delaware County.

Dear Mr. Lampkins:

This is in response to your formal complaint, which was received on June 19, 2003. You have alleged Clerk of the Circuit Court of Delaware County ("Clerk's Office") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Clerk's Office denied you access to public records with respect to a written request that you made dated June 2, 2003. Ms. Karen Wenger, Clerk of the Circuit Court, responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Clerk's Office did not deny you access to public records with respect to your June 2nd request because this request was never received.

## BACKGROUND

According to your complaint, in a letter dated June 2, 2003, you requested access to public records from the Clerk's Office. In that request, you asked for a copy of a police report filed by officer Kevin A. Durbin concerning your arrest on February 28, 2000. After receiving a response to a prior request from the Clerk's Office state that there was no record of an arrest, and that if you found that to be in error you should contact the Clerk's Office. You did so on June 2, 2003. You advised in your complaint that on June 2, 2003 you provided a photocopy of a supplemental case summary that referred to a report filed by a Muncie police officer named Kevin A. Durbin. When eleven (11) days passed and you did not receive a response you filed your complaint with this Office. In her response, Ms. Wenger stated that they have searched the Clerk's Office, and they were unable to find a request to the Clerk's Office dated June 2, 2003.

## 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. 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 purpose 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). A person who has been denied access to public records under the APRA may file an action in circuit or superior court to compel the public agency to allow inspection and copying of the public records. Ind. Code § 5-14-3-9 (d).

According to your complaint, you sent a request for a copy of a police report to Ms. Wenger on June 2, 2003. Ms. Wenger never received this request. A public agency must first receive a request in order to be responsible for a response under Indiana Code section 5-14-3-9. It is, therefore, my opinion that the Clerk's office did not violate the APRA with respect to your June 2nd request because that request was never received.

## CONCLUSION

It is my opinion that the Clerk of the Circuit Court of Delaware County did not deny you access to public records in violation of the APRA with respect to your June 2, 2003 public records request because the Clerk's Office did not receive your request.

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor

cc: The Honorable Karen D. Wenger,  
Clerk of Circuit Court, Delaware County