



# STATE OF INDIANA

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August 17, 2011

Mr. Clay Howard  
DOC # 112612  
5501 South 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 11-FC-192; Alleged Violation of the Access to  
Public Records Act by the Newton County Clerk*

Dear Mr. Howard:

This advisory opinion is in response to your formal complaint alleging the Newton 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

In your complaint, you allege that you submitted in writing a written request to the Clerk for a probable cause affidavit from a criminal case. You provide that the Clerk responded to your request in writing, but has not produced any records responsive to your request.

In response to your request, the Clerk provided written confirmation that it had received your request and was in the process of verifying information in connection with your request.

In response to your complaint, the Clerk maintained that it had responded to your request within the guidelines provided by the APRA. The Clerk advised that you requested a probable cause affidavit for Offender Randall Conley. After reviewing the document, consulting with the State Court Administration, and researching the relevant statutory guidelines, the Clerk denied your request pursuant to I.C. § 5-14-3-4(23).

## 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 I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. See 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

A request for records may be oral or written. See I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. If a public agency receives a request in writing, the public agency may only deny the request if the denial is issued in writing and includes the specific exemption or exemptions authorizing the withholding of the record, and the name and title or position of the person responsible for the denial. See I.C. § 5-14-3-9(c). A public agency bears the burden of showing that a record is exempt under the APRA. See I.C. § 5-14-3-9(f). Here, the Clerk responded to your initial request within the timeframes required by the APRA.

I note that under section 4 of the APRA, a public agency may not disclose records declared confidential by or under rules adopted by the supreme court of Indiana. I.C. § 5-14-3-4(a)(8). Confidentiality of court records is governed chiefly by Administrative Rule 9, which was adopted by the Indiana Supreme Court. The rule applies to court records, which is defined as both case records and administrative records. Admin. R. 9(C)(1). “Case record” means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case. Admin. R. 9(C)(2). All persons have access to court records as provided in Administrative Rule 9. Admin. R. 9(B)(1). However, some case records are confidential, pursuant to Administrative Rule 9(G). Administrative Rule 9 deems confidential information excluded from public access by specific court order. Admin. R. 9(G)(1)(c). Courts have the authority to seal court records in accordance with Ind. Code § 5-14-3-5.5. It is not clear from the documents before me whether the records requested in this matter were sealed.

However, it is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. See I.C. § 5-14-3-2(i). You are currently housed in the Westville Correctional Facility, although in the past you have been housed at the New Castle Correctional Facility. See *Opinions of the Public Access Counselor 09-FC-46; 09-FC-55; 09-FC-68; 09-FC-266*. I would also note that Randle Conley, the defendant in the probable cause affidavit that you have requested, is an “offender” for the purposes of the APRA and is currently housed at the New Castle Correctional Facility.

The APRA contains an exception to disclosure for information that could affect the security of a jail or correctional facility:

- Records requested by an offender that:
- (A) contain personal information relating to:
    - (i) a correctional officer (as defined in IC 5-10-10-1.5);
    - (ii) the victim of a crime; or
    - (iii) a family member of a correctional officer or the victim of a crime; or
  - (B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23). Thus, the Clerk could act within its discretion to withhold records that could concern or affect the security of a correctional facility. Here, the Clerk determined that after reviewing the probable cause affidavit and consulting with the State Court Administration, that disclosing the record could affect the security of the Westville Correctional Facility, where you currently are housed, and the New Castle Correction Facility, where Mr. Conley is housed and you have been housed in the past. Therefore, I do not find that the Clerk violated the APRA by exercising the discretion provided to it under the statute in denying your request.

The APRA requires public agencies to separate and/or redact the nondisclosable information in public records in order to make the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a). The Clerk has provided that the probable cause affidavit did not contain information that was disclosable pursuant to I.C. § 5-13-3-4(b)(23), as such it was not required to redact the record.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA in denying your request.

Best regards,



Joseph B. Hoage  
Public Access Counselor

cc: Newton County Clerk