



# STATE OF INDIANA

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October 6, 2011

Gregory P. Yeary  
DOC # 169399  
1946 W. U.S. Highway 40  
Greencastle, Indiana 46135

*Re: Formal Complaint 11-FC-244; Alleged Violation of the Access to Public Records Act by the Switzerland County Court Clerk*

Dear Mr. Yeary:

This advisory opinion is in response to your formal complaint alleging the Switzerland County Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Kimberly Hambrick, County Clerk, responded to your formal complaint. Her response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you submitted a request in writing on August 24, 2011 to the Clerk for certified records that were required for filing an action with the Indiana Supreme Court pursuant to Indiana Original Action Rule 3(C). As of October 19, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you provide that you have not received a response from the Clerk.

In response to your formal complaint, Ms. Hambrick provided that in August 2011 you have filed fifteen (15) separate record requests and/or motions with the Clerk. The documents that were the subject of your formal complaint were mailed by the Clerk on September 19, 2011. Ms. Hambrick provided that the Clerk employs three (3) full-time employees, of which two (2) were either on vacation or medical leave during the time you had made your requests. In addition, the Clerk was required to attend a district meeting in Switzerland County. Ms. Hambrick also advised that the Clerk has never failed to respond or provide documents in response to any of your requests.

## 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).

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. See I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. See I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. See *Opinion of the Public Access Counselor 02-FC-45*.

Under the circumstances provided, it is my opinion that the Clerk did not violate the APRA by not responding to your August 24, 2011 request until September 19, 2011. Under the APRA, a public agency shall “regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.” See I.C. § 5-14-3-7(a). See also *Opinion of the Public Access Counselor 09-FC-115* (two months was not an unreasonable production time where agency director and records request handler recently assumed the duties of another position and needed time to review and redact confidential information). See also *Opinion of the Public Access Counselor 07-FC-327* (Thirty-four (34) days was not an unreasonable amount of time to produce three-page document considering number of other pending requests). See also *Opinion of the Public Access Counselor 11-FC-222* (Thirteen (13) days was not an unreasonable amount of time to respond to the request when the agency either communicated or attempted to communicate with the requestor throughout the process).

Here, you made filed fifteen (15) records requests or motions with the Clerk during August 2011. In the time the Clerk was responding to your request, it did not have the services of two of its three full-time employees and was required to attend a district meeting in Switzerland County. After retrieving the documents that were requested, the Clerk was required to review the documents pursuant to the APRA. All the while the Clerk was responding to your requests, it was required to maintain the regular duties required of the office. As such, I do not believe the Clerk took an unreasonable amount of time to collect, review, and reproduce the records in response to your request.

## 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, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage  
Public Access Counselor

cc: Kimberly Hambrick