



STATE OF INDIANA

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November 7, 2011

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

Re: Formal Complaint 11-FC-263; Alleged Violation of the Access to Public Records Act by the Switzerland Circuit Court Clerk's Office

Dear Mr. Yeary:

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

BACKGROUND

In your formal complaint, you allege that you have yet to receive any records that were at issue in your two most recent formal complaints filed against the Clerk, 11-FC-244 and 11-FC-253. As to 11-FC-244, you have only received the "CCS", when you have requested certified copies of motions that are related to your criminal appeal. In regards to 11-FC-253, you requested file stamped copies of multiple motions filed with the Court, to which you allege the Clerk has still failed to respond.

In response to your formal complaint, Ms. Hambrick provided that the Clerk file stamps all records filed with the office and returns the additional copies of said records to the respective parties. The Clerk typically receives a self-addressed stamped envelope when a request has been made for the return of copies. Ms. Hambrick maintained that this process was followed in regards to your requests, and would have been followed even without the submission of a self-addressed stamped envelope.

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).

In Formal Complaint 11-FC-244, you alleged that the Clerk failed to respond to your records request that was filed on October 19, 2011. The Clerk responded that all records that were responsive to your request were mailed to you on October 19, 2011. The advisory opinion issued in response to your formal complaint found that the Clerk responded to your requests within a reasonable period of time.

In Formal Complaint 11-FC-253, you alleged that the Clerk failed to timely comply with Indiana Appellate Rule 10. The Clerk advised that it had complied with all orders issued by the Indiana Court of Appeals as to the Clerk's responsibilities in providing information to you as part of your criminal appeal. The Court of Appeals issued an Order which denied both of your Motions to Compel as to the Clerk. The advisory opinion issued in response to your formal complaint found that your records request was made pursuant to the Indiana Rules of Appellate Procedure, not the APRA; as such the Clerk did not violate the APRA.

In your present formal complaint against the Clerk, you provide that the Clerk still has not provided all records at issue in 11-FC-244 and 11-FC-253. You essentially are asking that a second advisory opinion be issued as to the same factual scenarios and issues that have already been presented. To the extent you believe that the Clerk persists in failing to respond to your specific requests noted in 11-FC-244 and 11-FC-253, I leave you to the remedies provided before a court pursuant to Ind. Code § 5-14-3-9(e).

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is stylized and cursive.

Joseph B. Hoage
Public Access Counselor

cc: Kimberly A. Hambrick