



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 4, 2011

William Holly
DOC 946422
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-211; Alleged Violation of the Access to Public Records Act by the Marion County, Center Township Small Claims Clerk of Courts

Dear Mr. Holly:

This advisory opinion is in response to your formal complaint alleging the Marion County, Center Township Small Claims Clerk of Courts ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Clerk. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for information about your appeal to the Clerk on July 27, 2012. You sought the answers to three questions to assist you in the appeals process. As of August 3, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Clerk has failed to respond in any fashion to your request.

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 twenty-four

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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part 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 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.

The APRA requires that a request for inspection or copying must identify with reasonable particularity the *record* being requested (emphasis added). *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request. *Opinion of the Public Access Counselor 04-FC-38*.

Further, public agencies are not obligated to create records in response to a request or to answer generalized inquiries. *See Op. of the Public Access Counselor 10-FC-120; 11-FC-07*. After reviewing your request that was submitted, it is my opinion that you primarily requested that the Clerk provide you with answers to various questions regarding the appellate process, as opposed to providing records. (e.g. “What is the address to the Appeals Court”; “Is Marion County Superior Court the Court I appeal to in the above.”). Your remaining inquiry provided simply “Copy of appellate rules?” If the Clerk had any records that were responsive to this portion of your request, it would be required to provide you with such records after receiving any applicable copy fees. As the remainder of your submission sought answers to generalized inquiries, rather than a request for records, it is my opinion that the APRA would not have been applicable.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk received your request for “copy of appellate rules” and maintained records that were responsive to it, it acted contrary to the APRA if it failed to provide said records after receiving the applicable copy fees from you. As to all other issues, 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 "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Center Township of Marion County Small Claims Court