



STATE OF INDIANA

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October 16, 2012

James C. Gaskill
DOC 209469
1946 W. U.S. 40
Greencastle, Indiana 46135

Re: Formal Complaint 12-FC-305; Alleged Violation of the Access to Public Records Act by the Clerk of the Fountain County Court

Dear Mr. Gaskill:

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

BACKGROUND

In your formal complaint, you allege you submitted a request for records to the Clerk on or about September 28, 2012. In response, the Clerk advised in writing that you would need to submit a certified copy of the last six months of your inmate commissary for the Judge to review in order to process your request. You believe the Clerk is denying your right to public records under the APRA with its response.

In response to your formal complaint, Ms. Gritten advised that I.C. §§ 33-37-3-2 and 33-7-3-3 address indigent persons and the relief from or waiver of fees. Your request was not denied; rather the Judge was attempting to determine whether you would qualify under said statutes so as to gain relief from paying the respective fees.

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 permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. The fee for copying documents may not exceed \$.10 per page for copies that are not color copies or \$.25 per page for color copies; or the actual cost to the agency of copying the document. *See* I.C. § 5-14-3-8(d)(1)-(2). A public agency may require a person to pay the copying fee in advance. *See* I.C. 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. After reviewing all records that have been submitted, it is my opinion that the Clerk did not deny your request. Rather, it was attempting to determine whether you would qualify under the pertinent statutes to receive relief from payment. As noted, *nothing* in the APRA requires that a public agency waive a copying fee (emphasis added). Pursuant to IC §§ 33-37-3-2 and 33-37-3-3, in certain civil actions, the appointment of a guardian, or actions commenced by person confined in the department of correction, the Court may waive certain fees. If you do not believe that the respective statutes are relevant to your request, you should inform the Clerk; who will in turn provide to you with the fee for the records that have been requested. Upon payment of the fees, the Clerk will then send you copies of the records that have been requested.

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 fluid and cursive, with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Ms. Patti Gritten