



STATE OF INDIANA

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May 9, 2014

Mr. Timothy J. Hallett
11208 John Galt Blvd.
Omaha, NE 68137

Re: Formal Complaint 14-FC-74; Alleged Violation of the Access to Public Records Act by the Vigo County Clerk

Dear Mr. Hallett,

This advisory opinion is in response to your formal complaint alleging the Vigo County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Michael J. Wright, Esq. attorney for the Clerk has responded to your complaint. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 2, 2014.

BACKGROUND

Your complaint dated April 2, 2014, alleges the Vigo County Clerk violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about February 10, 2014, you sent the Clerk a public records request for a number of documents relating to the procurement of the County's voting system. You did not receive a response and inquired again on February 26, 2014. The Clerk responded stating the records were being forwarded to the County attorney for review and then they would be released. Again on March 24, 2014 you sent another request for a status update. You have not received any other correspondence from the Clerk.

The Clerk responded to your complaint via its attorney on May 1, 2014. The letter suggests all of the documentation has now been provided to you.

DISCUSSION

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 Ind. Code § 5-14-3-1. The Vigo County Clerk is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

I trust the eventual production of records has satisfied your initial request. I am troubled, however, by the Clerk’s lack of communication with you. While it may take a reasonable time to produce the records, I have suggested in prior opinions there be an ongoing dialogue between the requestor and the public agency to advise as to status updates. If practical, information should be produced in a piecemeal fashion if it is a voluminous request. At the very least, the law requires an acknowledgement of the receipt of a public records request within seven (7) days. It is my expectation the Clerk will follow these recommendations and the APRA in the future.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Vigo County Clerk has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Michael J. Wright, Esq.