



STATE OF INDIANA

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July 25, 2016

Mr. Lukas A. Thompson
10412 Allisonville Road, Suite 200
Fishers, Indiana 46038

Re: Formal Complaint 16-FC-166 (Priority); Alleged Violation of the Access to Public Records Act by the Edgewood Town Court Clerk's Office

Dear Mr. Thompson:

This advisory opinion is in response to your formal complaint alleging the Edgewood Town Court Clerk's Office ("Office") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Ms. Debbie Condon. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 15, 2016.

BACKGROUND

Your complaint dated July 15, 2016, alleges the Edgewood Town Court Clerk's Office violated the Access to Public Records Act by failing to provide records requested multiple times by Camden & Meridew P.C., including via fax, phone, and in person. The records sought are necessary for a hearing to be held on August 5, 2016.

On June 21, 2016, your client's father, Mr. Jerry Ramsey, informed Camden & Meridew, P.C., he attempted to retrieve the certified copies sought by your office for an upcoming hearing, but was allegedly told the request must be made by the attorney, Ms. Nancy Green, Esq. On the same date, Ms. Green faxed a letter to the Office, specifying the records sought.

On July 12, 2016 the records had yet to be produced. At this time, Ms. Green instructed you, her paralegal, to contact the Office and ascertain a reason for the delay. You first placed a telephone call to the Office, at which time it was explained a technical issue was the reason for the delay of one of the documents requested. You then went to Office to obtain the records which were available; however, you were informed the records were not yet compiled. On July 13, 2016 the Office was able to retrieve the remaining record. All of the requested documents were certified, and subsequently placed in the mail.

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

A request for public records must be fulfilled by a public agency within a reasonable time. *See Indiana Code § 5-14-3-3(b)*. The APRA does not specify a time for production or inspection of responsive records. Often, this office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a "reasonable" time period under one circumstance may not be reasonable under other conditions.

The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request. Although reasonable time is not defined in the APRA or by the Courts, it is a standard which differs on a case-by-case basis.

The circumstances affecting the “reasonableness” of timely production of documents include: size of the public agency, number of pending requests, complexity of the request, and any other operational consideration which may reasonably affect the public records process. In this case, the Clerk’s Office was combating technical issues stemming from a virus, which delayed the retrieval of one of the records sought. The Office asserts that it in no way attempted to deliberately impede the access to records.

Additionally, it states it was unaware of your identity when you attempted to obtain the records on July 12, 2016. The Office informed you of its general practice of significantly redacting information contained in the file unless the requestor is the named defendant in a case, the defendant’s attorney or first obtains a court order. It should be noted the Office is required to follow the Indiana Administrative Rules. Rule 9 provides guidance on the access to court records, which starts with the presumption of open public access. Among the listed purposes of this rule, the court sought to protect individual privacy rights and interests. *See Ind. Admin. R. 9(A)(2)(f)*. Section G(2) lists the information which must be redacted from the public record to protect an individual’s privacy. Based on the information provided it is unclear whether the redacted portions fall into the exceptions listed under Section (G)(2). The rules do permit un-redacted versions for the parties to a case or their lawyers. *See Ind. Admin. R. 9(B)(2)*. Here, the Office was unaware you would be acting as an agent of Ms. Green.

Finally, I do not fault the Office for the delay in retrieving one of the requested documents due to the unforeseen virus attack on their computer system. In the future, however, I would encourage the Clerk’s Office to provide the documents requested as they are able to be compiled and supplement additional files at a later date if it is anticipated to cause a significant delay.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Debbie Condon