



STATE OF INDIANA

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March 7, 2016

Ms. Rachel Mohr
235 South County Road 750 East
Coatesville, Indiana 46121

Re: Formal Complaint 16-FC-24; Alleged Violation of the Access to Public Records Act by the Clerk of Putnam Circuit Court

Dear Ms. Mohr:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Putnam Circuit Court, Ms. Heather Gilbert (“Clerk”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 et. seq. The Clerk responded via counsel, Mr. James Ensley. 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 February 5, 2016.

BACKGROUND

Your complaint dated February 4, 2016 alleges the Clerk of the Putnam Circuit Court violated the Access to Public Records Act by refusing to allow copy and inspection of public records.

On January 27, 2016 you attempted to take pictures of genealogical documents in possession of the Clerk. These records date between 1861 and 1891. You were informed there is a no photograph policy at the Clerk’s Office. You allege other individuals were allowed to take pictures of similar records.

On February 18, 2016 counsel responded. Counsel asserts the no-photograph policy is not discretionary and if any individuals took pictures of records, it was without the knowledge of the Clerk and her office.

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 Ind. Code § 5-14-3-1. The Clerk of the Putnam Circuit Court 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 disclosable 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).

The Clerk has stated the no photograph policy is standard for the Office. Under Ind. Code 5-14-3-3(b):

A public agency may not deny or interfere with the exercise of the right stated in subsection (a). The public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.

While the term equipment is not defined under the APRA, Ind. Code 5-14-3-2(b) defines copy to include “transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means. Ind. Code § 5-14-3-2(b).

A picture taken on a camera is a copy for the purposes of the APRA because it duplicates the record onto electronic data storage and allows reproduction of the record from the data stored. Therefore, the Clerk’s policy of not allowing photographs is contrary to the APRA. While the Clerk can certainly regulate the manner in which the copy is made to prevent loss, damage, or destruction of the records, photographs should be a fairly harmless way to produce a copy of a record. It appears as if the Clerk’s Office has recognized the ‘no photograph’ rule is contrary to the statute and has demonstrated a willingness to take a look at the issue.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Clerk of the Putnam Circuit Court should revisit its policy on taking photographs and allow you to make copies with your equipment in the future.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. James W. Ensley, Esq.