



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 14, 2016

Ms. Susan Noto
2600 Michelson Drive, Floor 1200
Irvine, CA 92612

Re: Formal Complaint 16-FC-44; Alleged Violation of the Access to Public Records Act by the Clay County Recorder

Dear Ms. Noto:

This advisory opinion is in response to your formal complaint alleging the Clay County Recorder ("Recorder") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Recorder has not responded despite an invitation to do so on March 3, 2016. 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 March 2, 2016.

BACKGROUND

Your complaint dated March 1, 2016, alleges the Clay County Recorder improperly denied access to recorded document images in bulk form.

On October 30, 2015, you sent a request to the Recorder for documents. This request was acknowledged in a timely manner on November 5, 2015. On February 3, 2016, the Recorder ultimately denied your request telephonically. The justification for doing so was that the Recorder maintained the record on his computer and did not know how to transmit a copy.

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 Clay County Recorder 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 Recorder'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).

Ind. Code § 36-2-7-10.1 governs the release of bulk data to requestors and provides for a maximum charge for the sale of bulk form images at \$.07 a copy. The intent of the bulk data statute is to provide a more cost effective way for bulk users to purchase bulk form public records. In contrast, the Access to Public Records Act caps most documents at \$.10 per page.

Additionally, subsection (i) of the bulk data statute states:

The county recorder shall provide bulk users with bulk form copies in the format or medium in which the county recorder maintains the recorded documents and indices. If the county recorder maintains the recorded documents and indices in more than one (1) format or medium, the bulk user may select the format or medium in which the bulk user shall receive the bulk form copies. If the county recorder maintains the recorded documents and indices for finding, retrieving, and viewing the recorded documents in an electronic or a digitized format, a reasonable effort shall be made to provide the bulk user with bulk form copies in a standard, generally acceptable, readable format. Upon request of the bulk user, the county recorder shall provide the bulk form copies to the bulk user within a reasonable time after the recorder's archival process is completed and bulk form copies become available in the office of the county recorder.

The use of the word 'shall' by the General Assembly indicates that access is mandatory and not discretionary. From the information provided it appears as if no reasonable efforts were made to provide you access. Without a response from the Recorder (as required by Ind. Code § 5-14-5-5), I must take your complaint as true and accurate.

RECOMMENDATIONS

Based on the forgoing, it is the Opinion of the Public Access Counselor that the Clay County Recorder has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor