
OPINION OF THE PUBLIC ACCESS COUNSELOR

GREGORY A. PURVIS,
Complainant,

v.

CLERK OF THE MARION CIRCUIT COURT,
Respondent.

Formal Complaint No.
17-FC-265

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Clerk of the Marion Circuit Court (“Clerk”) violated the Access to Public Records Act¹ (“APRA”). The Clerk responded to the complaint through Deputy Clerk Russell Hollis. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on November 17, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Gregory Purvis (“Complainant”) filed a formal complaint alleging the Clerk of the Marion Circuit Court (“Clerk”) violated the Access to Public Records Act (“APRA”) by denying him the opportunity to inspect public records and by charging an unlawful search fee to inspect records.

On November 16, 2017, Purvis asked to inspect four historical divorce decrees at the Clerk’s office. He contends that the staff required him to fill out a “request for copies” form, despite the fact that he only wanted to inspect the records. The staff also indicated to Purvis that his request required research by the office for a fee. There was no posted notice for the fee, however, the next day the Clerk called Purvis to inform him there would be a \$7.00 “research fee” for the production of the records. Furthermore, Purvis alleges he was denied the opportunity to inspect the original documents, and only allowed to inspect copies.

In its answer, the Clerk does not dispute the factual basis presented by Purvis. Instead, the Clerk concedes that the actions of staff were erroneous and policy has been reinforced that is consistent with Indiana law. As for the original copies, the Clerk retains the records on microfilm, and due to the poor condition of the machine in which they are housed, the copies were the only way to produce the documents. As of November 27, 2017, the records have been available for Mr. Purvis to inspect free of charge.

ANALYSIS

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

APRA sets a standard fee schedule for most public agencies. *See* Ind. Code § 5-14-3-8. Even so, a different statute governs the fee schedule for County Clerks. Specifically, Indiana Code section 33-37-5-1 requires County Clerks to collect a fee of \$1.00 per page for public records unless the legislative body of the county has adopted a different fee schedule by ordinance. Nevertheless for any agency, a search fee is not statutorily authorized.

This is the first instance of which I’ve been made aware that the Clerk has charged a fee for “research.” Based upon the information provided, I am comfortable saying this instance was an outlier and truly a staff miscommunication. It appears as if the Clerk understands the current statutory provisions and will provide access to customers accordingly.

With historical public records, it may not always be practicable to allow inspection of originals. Originals may be frail

or retained on machines that do not allow traditional public access. In those rare circumstances, it may be appropriate and necessary for an agency to insist upon a copy fee to recoup its cost of making copies from a delicate originals. Typically, these situations arise from interactions with a County Recorder's office, but they may happen with other agencies from time to time as well. This is not a research or search fee, however, but rather a reasonable fee for recapturing costs associated with copying.

In any event, this Office does recommend in this case the Clerk mail the Complainant a copy of the records free of charge to mitigate the misunderstanding.

CONCLUSION

Based on the foregoing it is the opinion of the Public Access Counselor that the Marion County Clerk's Office mail a copy of the records in question to the Complainant free of charge. It appears as if the internal policies leading to the charging of a time and labor search fee have been amended.

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

Luke H. Britt
Public Access Counselor