



# STATE OF INDIANA

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April 6, 2009

Cleverly Lockhart  
DOC #895563  
3038 West 850 South  
Bunker Hill, Indiana 46914-9810

*Re: Formal Complaint 09-FC-56; Alleged Violation of the Access to Public Records Act by the Howard County Circuit Court Clerk*

Dear Mr. Lockhart:

This advisory opinion is in response to your formal complaint alleging the Howard County Circuit Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk violated the APRA because the office received your request and did not respond to the request within seven days.

## BACKGROUND

You allege that on January 19, 2009 and February 4, 2009 you sent to the Clerk a request for access to a medical report concerning you which you contended is associated with a specific cause number. You allege that as of the date of your complaint you had not received a response from the Clerk. Your complaint was postmarked on February 25, and my office received it on March 5.

The Clerk responded to the complaint by facsimile transmission dated March 5. The Clerk indicates all correspondence from you is to be directed to Judge Lett for further instructions. The Clerk contends Judge Lett has not given her office instructions regarding your most recent correspondence. Further, the Clerk notes that the office does not maintain copies of mental health reports.

## ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The Clerk is clearly a public agency for the purposes of the APRA. I.C. § 5-14-

3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you allege you mailed the request to the Clerk on February 4. As of February 25, you had received no response. If the Clerk received your mailed request, the Clerk had the duty to respond to the request within seven days of receipt. I.C. § 5-14-3-9(b). The Clerk contends that all correspondence from you must be sent to Judge Lett for further instructions. Notwithstanding that order from the Circuit Court, the Clerk is still obligated by the APRA to respond to your request within seven days. It would be my suggestion to the Clerk that when a request must be considered by the Judge, the Clerk should issue a letter to the requestor indicating the request has been received and is being considered by the Judge.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk violated the APRA because the office received your request and did not respond to the request within seven days.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Mona Myers, Howard County Circuit Court Clerk