



STATE OF INDIANA

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April 28, 2009

Aaron Spurling
12210 Driftstone Drive
Fishers, Indiana 46037

Re: Formal Complaint 09-FC-84; Alleged Violation of the Access to Public Records Act by the Shelby County Clerk's Office

Dear Mr. Spurling:

This advisory opinion is in response to your formal complaint alleging the Shelby County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk may limit the time the office retrieves records for public inspection but must accept the request during all normal business hours.

BACKGROUND

You allege that you appeared at the office three different times and requested access to a record maintained by the Clerk. You were told the office only pulls files on Tuesday and Thursday mornings. When you appeared at the office on one of those mornings, you were told the office only pulls files at the start of the day on Tuesday and Thursday mornings. You allege the policy is too restrictive to allow access to records maintained by the Clerk.

The Clerk responded to the complaint by letter dated April 2. The Clerk contends that she implemented the policy of pulling files on Tuesday and Thursday mornings to address the demands of the office and the limited staff. The Clerk contends that if you had telephoned prior to arriving at the office, the office could have pulled the file and had it ready for you to inspect.

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 in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

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.

The Clerk's policy to pull files only on certain days in order to meet the demands of the office and to address the staffing shortages is in compliance with the APRA. Pursuant to I.C. § 5-14-3-7(a), the Clerk must regulate material interference with the regular discharge of the duties of the office. Further, nothing in the APRA requires that a person must be provided access to a record immediately upon request. Instead, the agency must acknowledge the request within twenty-four hours and provide access to the record within a reasonable amount of time.

Here, while the Clerk's policy for pulling files complies with the APRA, it is my opinion the Clerk should look to implement a way to receive requests during all normal business hours so a person is not required to keep appearing at the office in the hopes he shows up at just the right time to have a file pulled. The Clerk contends if you had telephoned before arriving, the file would have been available. That information could have been provided to you at any one of your three appearances in the office. Perhaps the Clerk could consider providing a form or sign-up sheet for persons wishing to return at a mutually convenient time to inspect and copy a record. In my opinion the Clerk has not violated the APRA in employing the policy of pulling files on certain days but should look for ways to communicate the policy clearly to any person who might seek access to a record.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk may limit the time the office retrieves records for public inspection but must accept the request during all normal business hours.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Carol Stohry, Shelby County Clerk