

November 7, 2003

Larriante J. Sumbry  
965137 C-339  
Indiana Department of Correction  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361

Re: Advisory Opinion 03-FC-96: *Concerning the Alleged Violation of the APRA by the Indiana Clerk of Courts*

Dear Mr. Sumbry,

This is in response to your formal complaint, received on October 8, 2003. In it, you allege that Ms. Colleen M. Shere, of the Indiana Supreme Court, has violated the Access to Public Records Act (the "APRA"). Specifically, you allege that you requested public records from Ms. Shere and she failed to respond within seven (7) days. Mr. David R. Schanker, Chief of Staff for the Clerk of Courts (the "Clerk"), forwarded to this office a copy of the letter he mailed directly to you. A copy of that letter is enclosed for your reference.

For the reasons set forth below, it is my opinion that there has been no violation of the APRA.

#### BACKGROUND

You allege that you sent a letter dated September 22, 2003, to Ms. Shere,<sup>1</sup> and that Ms. Shere failed to respond within seven (7) days. In your letter, you requested the following documents:

- "Copy of the Verified Complaint filed on Honorable Joan Kouros under cause 94S00-0301-MS-27"; and
- "Addresses to Indiana Judicial College/National Judicial College".

In his response, Mr. Schanker states that he did not receive your request. After receiving your complaint, Mr. Schanker processed your request. In his response, he states that the verified

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<sup>1</sup> Your complaint indicates that the name of the public agency denying access is the Indiana Supreme Court. Ms. Shere is Acting Clerk. The Clerk is a separately elected position and not part of the Indiana Supreme Court.

complaint you requested does not exist. He also states that it is not the Clerk's responsibility to look up names and addresses of organizations not affiliated with the Clerk's 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." Ind. Code § 5-14-3-1. The Clerk is clearly a public agency for the purpose of the APRA. IC 5-14-3-2. 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 Indiana code section 5-14-3-4. IC 5-14-3-3(a).

According to your complaint, you allegedly provided the Clerk with your request on or about September 22, 2003. However, Mr. Schanker advised that your request was not received until after the Clerk's office was advised of your formal complaint. A public agency must first receive a request in order to be responsible for a response under Indiana Code section 5-14-3-9. Since the Clerk's office did not receive your request until after your complaint, it is my opinion that the clerk's office did not violate the APRA by failing to respond to your request.

It should be noted that Mr. Schanker has since processed your request. He states that the verified complaint you requested does not exist. He also states that it is not the Clerk's responsibility to look up names and addresses of organizations not affiliated with the Clerk's office.

#### CONCLUSION

It is my opinion that because the Clerk did not receive your request until informed of your formal complaint, the Clerk did not violate the Access to Public Records Act. Additionally, it should be noted that the Clerk's office has since responded to your request.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. David R. Schanker, Chief of Staff for the Clerk of Courts