

March 12, 2008

Nancy Garbrecht  
Indiana, Illinois, Iowa Foundation for Fair Contracting  
6170 Joliet Road, Suite 200  
Countryside, Illinois 60525

*Re: Formal Complaint 08-FC-60; Alleged Violation of the Access to Public Records Act by the Clerk of the Starke County Circuit Court*

Dear Ms. Garbrecht:

This advisory opinion is in response to a formal complaint filed by you alleging the Clerk of the Starke County Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. A copy of the Clerk's response to your complaint is enclosed for your reference. It is my opinion the Clerk's response was untimely under the APRA.

#### BACKGROUND

You allege you submitted to the Clerk a request for copies of records by letter dated February 1, 2008 and sent via certified mail. The request was received by the Clerk on February 4. Receiving no response, you filed this complaint on February 20.

The Clerk responded to the complaint by letter dated February 21. The Clerk indicates that after an extensive search of the records, the Clerk finds no records responsive to your request. The Clerk contends the request should be directed to the Starke County Development Foundation.

#### 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's office is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk's office

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, the agency must respond to the request within seven days of receipt. I.C. § 5-14-3-9(b).

Here, the Clerk received your request on February 4 and did not respond until you filed a complaint with this office. Regardless of whether records exist responsive to the request, the Clerk is still obligated to respond to requests within seven days of receipt, when such requests are received by mail. I.C. § 5-14-3-9(b). As such, the Clerk's response was untimely under the APRA.

The Clerk contends you requested records which do not exist in the Clerk's office. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. As such, the Clerk appropriately directed you to the agency which maintains the requested records.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk of the Starke County Circuit Court violated the Access to Public Records Act by failing to timely respond to your request.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Evelyn Skronski, Clerk of the Starke County Circuit Court