



# STATE OF INDIANA

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July 12, 2008

Ronald Lunsford  
DOC #896066  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 08-FC-166; Alleged Violation of the Access to Public Records Act by the Elkhart County Clerk*

Dear Mr. Lunsford:

This advisory opinion is in response to your formal complaint alleging the Elkhart County Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Clerk's response to the complaint is enclosed for your reference. It is my opinion the Superior Court 3 Clerk's response was untimely but the Clerk did not otherwise violate the APRA.

## BACKGROUND

You allege that on May 28, 2008 you sent to the Clerk a request for access to records. Specifically, you requested a copy of the affidavit for probable cause and arrest warrant in your case. You allege that the Clerk failed to respond to the request. You filed this complaint on July 7. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Elkhart Circuit Court Clerk responded to the complaint by letter dated July 10, 2008. The Clerk explains that the Clerk for Superior Court 3 received your request. The Clerk in Court 3 could not locate your file because the case had been transferred to Superior Court 2. The Clerk in Superior Court 3 forwarded the request to Superior Court 2 for response. The Clerk in Superior Court 2 received the request on July 3 and responded to you by letter dated July 3. The Clerk included a copy of the Order for Probable Cause. In the letter, the Clerk indicated "we are not allowed to give copies of warrants." The Circuit Court Clerk explains in her July 10 letter that she has advised her staff that warrants are indeed public records once they have been served. But in this case, the arrest was warrantless, so no copy of a warrant exists. As such, no copy of a warrant can be produced.

## 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. 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).

Here I do not have an indication when the request was initially received by the Clerk in Superior Court 3, but you indicate you sent the request on May 28. You did not receive a response until the response dated July 3 was sent by the Clerk in Superior Court 2. Even though the Clerk sent your request to another court clerk for response, the Clerk still had a duty under the APRA to respond to the request within seven days of receipt. I.C. § 5-14-3-9(b). Often when an agency sends a request to another agency for production of records, the original receiving agency will send correspondence to the requester indicating the request has been sent to another agency for response.

Regarding the indication in the July 3 letter that warrants are not public records, the Clerk indicates she has now advised her staff that warrants are indeed public records. In this case, though, no warrant exists. Because an agency cannot provide access to a record which does not exist, it is my opinion the Clerk has not violated the APRA by not providing you a copy of a warrant.

## CONCLUSION

For the foregoing reasons, it is my opinion the Superior Court 3 Clerk's response was untimely but the Clerk did not otherwise violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Stephanie Burgess, Clerk of the Elkhart Circuit Court