



STATE OF INDIANA

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September 23, 2008

Andre Nelson
DOC #934979
4490 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 08-FC-204; Alleged Violation of the Access to Public Records Act by the Lake County Clerk

Dear Mr. Nelson:

This advisory opinion is in response to your formal complaints alleging the Lake County Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. You filed two complaints against the Clerk, and my office consolidated the complaints, which are both addressed in this opinion. A copy of the Clerk's response to the complaints is enclosed. In my opinion the Clerk did not violate the APRA.

BACKGROUND

You filed the present complaints on September 9, 2008. In the first complaint, you allege the Clerk denied you access to a sentencing transcript and *voir dire* transcript for a certain cause number. You do not make specific allegations in this complaint but checked the box indicating you allege denial of access. Further, you allege in the second complaint that you should not be charged for copies of "praecipe cause # 45G01-9304-CF-00086." The Clerk sent you a letter on August 19 in response to your August 15 request. In the August 19 letter, the Clerk indicates the fee for the copies is \$160, based on a rate of \$1 page.

My office sent a copy of the complaints to the Clerk and invited the Clerk to respond to the complaints. While the Clerk did not respond directly to the complaints, the Clerk sent to my office a copy of a September 9 letter sent to you by Bonnie Jones of the Superior Court of Lake County Criminal Division. Ms. Jones indicates in the letter that your request was addressed in a 1995 order of the court. Further, Ms. Jones indicates you received a copy of the sentencing transcript on July 23, 1993. Finally, Ms. Jones indicates that the records related to the cause are on file with the Indiana Court of Appeals Clerk's Office and as such you should direct your request there.

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).

If:

- (1) a person is entitled to a copy of a public record under this chapter; and
- (2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the record; the agency must provide *at least one copy* of the public record to the person . . .

I.C. § 5-14-3-8(e), *emphasis added*.

You allege that you have been denied access to the sentencing and *voir dire* transcript. The Clerk indicates you were provided a copy of the sentencing transcript on July 23, 1993. The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. See I.C. § 5-14-3-8(e). The Clerk has provided you one copy of the sentencing transcript and as such has not violated the APRA.

Further, the Clerk contends the records you currently seek are on file in the Indiana Court of Appeals Clerk's Office. Nothing in the APRA requires an agency to retrieve records from another agency to fulfill a request. Instead, the APRA directs the requester to request records from the agency which maintains those records. See I.C. § 5-14-3-3. It is my opinion the Clerk has not denied you access to the requested records.

Regarding fees for copies of records, a public agency is allowed by the APRA to charge fees for copying and certification of records. See I.C. § 5-14-3-8. Further, the Indiana Code contains some statutes which address fees for specific records or records maintained by specific agencies. One such statute is I.C. § 33-37-5-1, which indicates the fee for transcripts or copies of court records shall not exceed \$1.00 per page. You indicate that your public defender in 1993 indicated you would receive a copy of transcripts once an opinion had been handed down by the appellate court. This indication, contained in a letter from your public defender dated October 13, 1993, is not an indication from the Clerk that you could obtain records from the Clerk or Court at no cost. The letter is from the Office of the Public Defender, an agency separate from the Clerk or the Court.

There is no provision in the APRA entitling you to copies of public records at no charge. It is possible in some instances the General Assembly may have provided for fee waivers for copies of certain public records. Further, there may be instances when a court

will issue an order of indigence ordering an incarcerated person to receive copies of certain public records at no charge. In the case of your request to the Clerk, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge. As such, the Clerk has not violated the APRA by indicating it will charge you for the copies you received.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Bonnie Jones, The Superior Court of Lake County, Criminal Division