



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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December 23, 2015

Mr. Charles Davis, Sr. - #930610
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 15-FC-301; Alleged Violation of the Access to Public Records Act by the Bartholomew County Clerk (amended)¹

Dear Mr. Davis:

This advisory opinion is in response to your formal complaint alleging the Bartholomew County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk has responded to your complaint via Clerk, Mr. Jay Phelps. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 10, 2015.

BACKGROUND

Your complaint dated November 5, 2015 alleges the Bartholomew Circuit Court violated the Access to Public Records Act by not providing you with records you requested.

On or about October 6, 2015 you submitted a request for public records to the Court seeking a number of documents. As of the date of the filing of your formal complaint, you had not received an acknowledgement or receipt of your request.

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." See Ind. Code § 5-14-3-1. The Bartholomew County Clerk is a public agency for the purposes of

¹ Please be advised this Opinion was originally published with the respondent identified as the Bartholomew Circuit Court instead of the correct party, the Bartholomew County Circuit/Superior Court Clerk.



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the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(d).

Without the benefit of a response from the Clerk, I am left to conclude they received your request and failed to comply with the seven (7) day deadline for responding to public access requests. Public agencies are required to cooperate with investigations by this Office pursuant to Ind. Code § 5-14-5-5.

CONCLUSION

Based on the foregoing, it is the determination of the Office of the Public Access Counselor the Bartholomew County Clerk has violated the Access to Public Records Act.

AMENDMENT

On December 23, 2015, this Office received a telephone call from the Honorable Judge Stephen R. Heimann alerting us to the necessity of the correction referenced in Footnote 1. This Office did not receive the response from Mr. Phelps until the Judge submitted it with his request for a correction.

While Mr. Phelps's has stated the reasons why public records were not disclosed to you, he did not state why no acknowledgement was provided to you pursuant to Ind. Code § 5-14-3-9(c). Therefore, while the denial may ultimately be proper (although not the subject of your complaint); the procedure for acknowledgement still appears to be deficient and the original conclusion stands.



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Regards,

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Jay Phelps; Hon. Stephen Heimann, Judge