



STATE OF INDIANA

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January 22, 2016

Mr. Theotis Tolliver
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 15-FC-331; Alleged Violation of the Access to Public Records Act by the Clerk of the Lake Circuit/Superior Court

Dear Ms. Tolliver:

This advisory opinion is in response to your formal complaint alleging Clerk of the Lake Circuit/Superior Court ("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 Ms. Donna Verbeeren, Felony Deputy Clerk. Her response is enclosed for your review. 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 December 29, 2015.

BACKGROUND

Your complaint dated December 3, 2015 alleges the Clerk of the Lake Circuit/Superior Court violated the Access to Public Records Act by failing to respond to your records request.

On November 19, 2015 you requested Oaths of Service from the Clerk. As of the filing of your complaint you had not received a response.

On January 8, 2016, the Clerk responded stating the Clerk did indeed respond to your request and they would need additional time to search for the records due to the limited staff during the holidays. The Clerk states it has one Oath of Service, which was sent to you. The Clerk does not possess the other Oaths of Service.

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 Clerk of the

Lake Circuit/Superior Court is a public agency for the purposes of 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).

The Clerk contends it did respond to your request. However, the Clerk did not include a copy of this correspondence for our office or your records. If the Clerk did send a response to you, it was likely a casualty of the prison mail system. If the Clerk did not send a response to you, it has violated the APRA.

The Clerk has stated it does not possess two (2) of the Oaths of Service you requested. The APRA does not require a public agency to provide a record it does not possess. Therefore, the Clerk's inability to provide the Oaths is not a violation. Further, the Clerk functions under the APRA; a public agency has a reasonable amount of time to produce a document. In this case, a delay of one (1) month is not unreasonable if the Clerk was short-staffed during the holiday season. The Indiana Secretary of State would likely have the other Oaths you seek. My recommendation is to send your request to that office.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Donna Verbeeren