



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 10, 2011

Mr. Samuel L. Hampton
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 11-FC-186; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office

Dear Mr. Hampton:

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The response from the Clerk's chief of staff, Scott Hohl, is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request in writing on July 18, 2011 for a filed stamped, certified copy of a Notice of Deposition, filed on May 18, 2008 under Cause No. 49-G02-08-FA-44326. You further allege that you had not received a response from the Clerk as of August 5, 2011, the date that you filed your formal complaint with the Public Access Counselor's Office.

In response to your formal complaint, the Clerk advised that they had no record of your records request from July 18, 2011. The Clerk provided copies of their prior responses to your records requests from January 31, 2011, February 17, 2011, and March 9, 2011.

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* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Clerk's public

records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The Clerk maintains that it did not receive a request from you. If the Clerk did not receive your request, it was not obligated to respond to it. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Clerk received your request. Under the APRA, if a 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. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Clerk did receive your request and did not respond to it within these timeframes, the Clerk violated the requirements of section 9(c) of the APRA.

I trust that the Clerk will respond to your request in accordance with the APRA. If you want to ensure that your request reaches the Clerk in the future, I would advise you to send it to the attention of Scott Hohl, Chief of Staff, Marion County Clerk.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk did not respond to your written request within seven (7) days of receiving it, it violated the APRA. However, if the Clerk never received your request, then it did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Scott Hohl, Marion County Clerk's Office