



STATE OF INDIANA

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June 13, 2013

Mr. Cecil J. Black
DOC 146134
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 13-FC-155; Alleged Violation of the Access to Public Records Act by the Clerk of the St. Joseph Circuit and Superior Court

Dear Mr. Black:

This advisory opinion is in response to your formal complaint alleging the Clerk of the St. Joseph County Circuit and Superior Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Terri J. Rethlake, Clerk, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on May 2, 2013, you submitted a written request for records to the Clerk. As of May 28, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any response from the Clerk. You specifically requested a copy of the sentencing order issued under Cause No. 71-D02-0309-MR-00022.

In response to your formal complaint, Ms. Rethlake advised that the Clerk has no record of receiving your request. A copy of the sentencing order requested is now enclosed for your review.

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).

A request for records may be oral or written. *See* 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 (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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.

The Clerk maintains that it did not receive a request from you. 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 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 received your request and did not respond to it within these timeframes, the Clerk acted contrary to the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it. A copy of the sentencing order requested is now enclosed; I trust this to be in satisfaction of your formal complaint.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Clerk did not violate the APRA if it never received your request.

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: Terri J. Rethlake