



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 2, 2013

Mr. Fred Peters #26498
Pendleton Correctional Facility
4190 W. Reformatory Road
Pendleton, IN 46064-9001

Re: Formal Complaint 13-FC-261; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office and Marion County Criminal Court

Dear Mr. Peters,

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk's Office, ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. Scott Hohl, Chief of Staff, responded on behalf of the Clerk. His response is enclosed for your reference. 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 September 9, 2013.

BACKGROUND

Your complaint alleges the Clerk of the Court violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

You allege that on or about August 2, 2013, you made a third request for records upon the Marion County Clerk of Court #20 ("Court") for various documents related to your criminal case. You claim you were refused access when the Hon. Judge Steven Eichholtz ordered you pay for the copies requested. A copy of the order has not been submitted with your complaint. In your formal request for an opinion, it is unclear upon which public agency – the Clerk or the Court – you made your request. It appears your complaint is directed toward the Court itself; however, for the purposes of this opinion, both public agencies will be addressed.

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 Marion County Clerk and Courts are public agencies 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 Department’s 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); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(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(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.

In its response, provided for your review, the Clerk alleges the access was denied, because you made the request upon the wrong public agency. The Clerk maintains the individual Court is responsible for compiling and disclosing all records. If taken to be true and they are not the custodians of the records you seek, the Clerk is not responsible for compiling and releasing the records. For that reason, they have not violated the APRA.

As to the Court, you allege the Hon. Judge Eichholtz ordered you to pay a copying fee for the records. The order was not attached to your complaint, but if the aforementioned order contained such language, please be advised pursuant to Ind. Code § 5-14-3-9(b), et. al., the Court may charge a fee for the cost of copying or providing electronic media to you. Your argument cites § Ind. Code 29-1-3-7.5 and Ind. Tr. Rule 5 as entitlement to copies without charge. The Indiana Code section you cite does not exist. Additionally, I do not know of any exception to copy fees under the Probate Title that would be applicable here. Trial Rule 5 concerns litigation matters that are beyond the scope of this Office and are not relevant to public access considerations.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor neither the Marion County Clerk nor the Marion Criminal Court 20 violated the APRA in denying your request.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

cc: Scott Hohl, MPA, Hon. Judge Steven Eichholtz