



# STATE OF INDIANA

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December 19, 2013

Mr. Mark E. Thompson  
120 E. Market St., Ste. 624  
Indianapolis, IN 46204

*Re: Formal Complaint 13-FC-328; Alleged Violation of the Access to Public Records Act by the Marion County Clerk*

Dear Mr. Thompson,

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 Clerk responded to your complaint via Mr. Scott Hohl, Chief of Staff. His 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 November 19, 2013.

## BACKGROUND

Your complaint alleges the Marion County Clerk violated the Access to Public Records Act by denying producing records responsive to your request.

On September 25, 2013 you submitted a records request to the Marion County Clerk seeking information regarding bond information and criminal defendant custody data. In the past, you were provided this data in the form of an Excel spreadsheet from the City of Indianapolis' JUSTIS database program.

You were informed by the Clerk's office on October 1, 2013, despite the production of the data in the past; a new program may have to be written in the JUSTIS system to produce the current data. The Clerk confirmed with the programmer who previously dealt with your requests that a new program would in fact need to be written in JUSTIS. Due to the conversion from the legacy JUSTIS system to the state-wide Odyssey program, you were informed the production of data may be delayed as programmers were occupied by the Odyssey transition.

Your request was not denied, but production of data was delayed until some programmer time was freed up. In the interim, it appears the Clerk offered you an opportunity to view and copy the data manually.

## ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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’s Office 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 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 the request has been received and information regarding how or when the agency intends to comply.

The crux of the current issue is whether the data you seek must be mined by an independent program within the JUSTIS case management software or if it already exists from previous requests. I cannot state conclusively one way or the other and neither party have offered evidence to suggest either way.

Assuming a programmer would need to extract the data by writing code to produce it, the County has extended you a gratuitous service in the past. There is nothing in the APRA which obligates a public agency to write a program to satisfy a public records request. The only requirements are that any person may inspect and copy the public records of any public agency during the regular business hours of the agency; and a public agency which maintains public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. See Ind. Code § 5-14-3-3(a) and (d). Nothing requires a separate program be written. I do not interpret “reasonable efforts” as devoting a public employee’s time to create a program that does not exist in order to provide information in a particular fashion.

That being said, I commend the Clerk for doing just that in the past. If the program which has been used before still exists and is operational to the point of mining the data responsive to your request, then they should provide it to you within a reasonable amount of time. If taken at their word, however, that particular program is antiquated for the purposes of your current request.

It should be noted the Clerk has not denied your request, but only has asked for your patience while a programmer can be assigned to facilitate the retrieval of the data. This is not unreasonable from a public access perspective. I will not comment on the underlying

conspiratorial allegations of your complaint, other than noting the Clerk's responses do not appear to indicate an intentional suppression of nefarious information. Even if the pejorative data exists, they have given you full manual access to it. I do not often interpret a parties' "tone" in communications submitted to this Office, but I construe the Clerk's Chief of Staff's written interactions with you to be diplomatic and regretful of the inconvenience to you.

I have not been provided any evidence of a denial of access, only a delay. Based on the circumstances in transitioning case management software, an unusually extended delay is not unjustified in this situation. Again, you have full manual access to the data. It is my sincere hope in the future the Clerk will be able to continue to provide electronic data in a form convenient to the public once the new system is up and running.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Marion County Clerk did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Scott Hohl