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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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SEAN E. POSEY.,  
*Complainant,*

v.

MARION COUNTY CLERK'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
18-FC-8

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Marion County Clerk's Office ("Clerk") violated the Access to Public Records Act<sup>1</sup> ("APRA"). This Office has not received a response from the Clerk despite an invitation to do so on January 22, 2018. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 22, 2018.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## BACKGROUND

Sean E. Posey (“Complainant”) filed a formal complaint alleging the Marion County Clerk’s Office violated APRA by failing to respond to a public records request.

Posey requested the probable cause affidavit and the charging information related to *State of Indiana v. Chad Wright*, case number 49G06-0807-FB-172696. Posey sent the request to the Clerk on or around December 18, 2017. After receiving no response, he filed a formal complaint with this Office on or around January 17, 2018, which the Office received on January 22. This Office notified the Clerk of the Complaint on January 22, 2018.

## ANALYSIS

Posey contends that the Clerk has violated APRA by failing to respond to his records request.

The public policy underlying APRA states, “(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.” Ind. Code § 5-14-3-1. Therefore, unless an exception applies under section 4, any person has the right to inspect and copy a public agency’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

The Marion County Clerk’s Office is a public agency for the purposes of the APRA; and therefore, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(n). Thus, unless an exception applies, Posey has the right to inspect and copy the Clerk’s public records. A public agency is required to make a response to a written request that has been mailed

within seven (7) days after it is received or the request is deemed denied. Ind. Code § 5-14-3-9(c).

Here, if the Clerk received the request, the Clerk was required to send a response within seven (7) days after receiving it. Furthermore, if an agency denies a records request submitted in writing, it is required to deny the request in writing and provide the statutory exemption authorizing the withholding of the requested record, along with the name and position of the person denying the request. Ind. Code § 5-14-3-9(d). If the Clerk received the request and chose to deny the request, the Clerk should have sent a written denial to the Complainant.

Without the benefit of a response, this Office does not know whether the Clerk received the request. It is worth noting that the case summary available through the MyCase website does not display any request received for records related to that case number. It has been my experience that sometimes records requests related to court case numbers are noted in the case summaries online.

Indeed, it is possible that the Clerk did not receive Posey's request. Posey mailed the request from a correctional facility, and this Office is familiar with the difficulties of sending and receiving mail correspondence from correctional facilities. A lack of response because an agency never received a records request sent by an offender is a common complaint received by this Office.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that the Marion County Clerk's Office violated the Access to Public Records Act if it received the Complainant's request.

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

**Luke H. Britt**  
Public Access Counselor