



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

November 18, 2008

Gregory Payne  
DOC #875028  
Wabash Valley Correctional Facility  
PO Box 1111  
Carlisle, Indiana 47383

*Re: Formal Complaint 08-FC-225; Alleged Violation of the Access to Public Records Act by the St. Joseph County Clerk*

Dear Mr. Payne:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Clerk has not violated the APRA if the office does not maintain the records you have requested.

## BACKGROUND

You allege that on September 24, 2008 you submitted a request to the Clerk for access to records related to your arrest. You allege that the Clerk indicated the South Bend Police Department maintains the records, but the Department indicated it does not maintain the records. You mailed this complaint on October 21, and my office received it on October 24.

My office sent a copy of your complaint to the Clerk and invited the Clerk to respond. To date my office has not received a response to the complaint.

## ANALYSIS

The public policy of the 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." I.C. § 5-14-3-1. The Clerk is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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

Here, I understand the Clerk received your request and responded to it, indicating the records you have requested are maintained by the South Bend Police Department. Nothing in the APRA requires an agency to obtain and provide copies of records the agency does not already maintain. If the Clerk does not maintain the records you have requested, the Clerk has not violated the APRA by failing to provide you access to those records.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Rita Glenn, St. Joseph County Clerk