



# STATE OF INDIANA

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March 21, 2012

Darrell Jones  
DOC 98834  
6908 S. Old U.S. Highway 41  
Carlisle, Indiana 47838

*Re: Informal Inquiry 12-INF-10; St. Joseph County Clerk's Office*

Dear Mr. Jones:

This is in response to your informal inquiry regarding the St. Joseph County Clerk's Office ("Clerk") filed with the Public Access Counselor's Office on March 14, 2012. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* St. Joseph County Clerk Terri J. Rethlake responded to your informal inquiry. Her response is enclosed for your reference.

## BACKGROUND

On February 29, 2012 you submitted a public records request to the Clerk for a copy of the following records in relation to Antoine Bird's ("Bird") 2005 conviction in St. Joseph County: chronological case summary, Guilt Plea Agreement, and a complete cause number for the criminal matter. On March 5, 2012 the Clerk responded in writing and provided that you would need to provide a cause number in order for it to clarify your request. You were unable to provide the Clerk with the cause number, but you do believe you provided enough specific information so that the Clerk would be able to identify the records that were sought.

In response to your informal inquiry, Ms. Rethlake advised that your request sought records in regards to Bird's 2005 conviction in the St. Joseph County Court. In looking for Bird's information in the Clerk's felony database, four cases were found. However, none of the cases identified have a conviction date of 2005. Since you were unable to provide any other identifying information for Mr. Bird, the Clerk was unable to process your request. Copies of the records from Ms. Rethlake's felony database search are enclosed for your reference.

## 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 in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 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* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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. Here, the Clerk responded to your written request within the time guidelines provided by section 9 of the APRA.

The APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *See Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinion of the Public Access Counselor 02-FC-13*. Upon receiving your request for records related to a 2005 conviction for Bird, the Clerk was unable to find any records that were responsive to it. As opposed to denying the request, the Clerk sought from you further identifying information (i.e. cause number) so that it could conduct an additional search. Enclosed you will find results of the search performed by the Clerk for Bird, which indicate that that he had a criminal judgment entered against him in St. Joseph County in 2003, 2004, and 2006. As such, it is my opinion that the Clerk complied with the APRA in responding to your request.

If I can be of any further assistance to either party, please do not hesitate to contact our office.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with a large initial "J" and a distinct "H" and "oage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Terri J. Rethlake