



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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November 22, 2010

Mr. Marquis D. Shipp  
4490 W. Reformatory Rd.  
Pendleton, IN 46064

*Re: Formal Complaint 10-FC-253; Alleged Violation of the Access to Public Records Act by the Marion County Clerk*

Dear Mr. Shipp:

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk (the "Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The Clerk's response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on October 12, 2010, you requested public records from the Clerk. As of October 21st, you had not received a response.

In response to your complaint, the Clerk's chief of staff, Scott Hohl, states that the Clerk did not receive your request until Friday, October 22nd. He claims that the other most recent request from you was received in July of 2010, which the Clerk responded to. With regard to your October 12th request, the Clerk does not maintain any records responsive to that request.

## ANALYSIS

The Clerk claims that it does not maintain records responsive to your request. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61; see also Opinion of the Public Access*

*Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

Cc: Scott Hohl