



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 6, 2010

Mr. Marcus D. Richardson
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838-2222

Re: Formal Complaint 10-FC-62; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office

Dear Mr. Richardson:

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk's Office (the "Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I have enclosed the Clerk's response.

BACKGROUND

According to your complaint, you requested that the Clerk provide you with a copy of an arrest warrant issued in 1994. You allege that the Clerk failed to "properly respond" to your request in violation of the APRA. You request that this office issue an "order for [the Clerk] to respond in writing why this information can not [sic] be found."

My office forwarded a copy of your complaint to the Clerk. As of today, we have not yet received a response.

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 a "public agency" under the APRA. 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 public records are excepted from disclosure as 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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, you do not claim that the Clerk failed to respond; rather, you allege that the Clerk failed to “properly” respond because the Clerk did not explain in writing why the record you requested could not be located. When a public records request is made in writing and the agency denies the request, the agency must deny the request in writing and must 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. I.C. § 5-14-3-9(c). The APRA does not require any further explanation from the agency.

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...”). The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. See I.C. § 5-14-3-4(e). Thus, if the search warrant you requested does not exist because it was disposed of in accordance with an applicable retention schedule, the Clerk did not violate the APRA.

Finally, this office does not have the authority to issue an “order” of the type that you seek. See I.C. § 5-14-4-10. Such an order, if available at all, would come from a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Elizabeth White