



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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July 9, 2015

Mr. Howard Steele #875796
Wabash Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 15-FC-170; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office

Dear Mr. Steele,

This advisory opinion is in response to your formal complaint, which alleges Marion County Clerk's Office ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Office has replied via the Honorable Magistrate Stanley E. Kroh. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 25, 2015.

BACKGROUND

Your complaint dated May 18, 2015, alleges that the Marion County Clerks' Office and Magistrate Kroh violated the Access to Public Records Act by failing to respond to your records request.

You submitted a records request to the Marion County Court, seeking records related to a specific case number. On May 11, 2015, the Court denied your request citing the fact that either you or your public defender has already been provided with a copy of the records you requested.

On June 4, 2015, Magistrate Kroh responded to your complaint and reiterated the denial stated in the Court's order.

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



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of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Marion County Clerk’s Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office’s disclosable, public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Your request was conspicuously marked as a request for public records and not a discovery request or a motion under the trial rules. This Office has stated on several occasions the Public Access Counselor will not interfere on the judiciary’s sovereign jurisdiction to adjudicate discovery requests under the trial rules. However, because it was submitted as an APRA request, it falls outside the scope of trial or post-conviction relief procedure and the judiciary is subject to the APRA as if it were any other public agency. See Ind. Code § 5-14-3-2(n)(2)(c).

That being said, if you are seeking documents from a public agency you are required to remit any applicable copy fee. The status as an indigent person does not apply to public records requests as if you were a litigant in a criminal proceeding.

In your complaint, you solely rely on the fact you previously have been able to make multiple requests for the same record. The APRA does not require a public agency to provide records it has already provided. If the agency chooses to do so, it does not set a precedent that would make its failure to provide records an APRA violation. That being said, I encourage agencies to have a policy which permits a requester to receive one copy per year upon request. This Office recognizes documents get misplaced or lost. This problem can be exacerbated by prison policy and security as well.

RECOMMENDATION

It is unclear from the information provided whether it is the Court or the Marion County Clerk who is the custodian of the records you seek. In any event, it is my recommendation the custodian of the record releases the copies of the information you seek after obtaining payment of any applicable copy fee.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Cc: Hon. Stanley Kroh