



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

December 20, 2013

Pendleton Correctional Facility
ATTN: Mr. Marcus D. Richardson - 944814
5124 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 13-FC-331; Alleged Violation of the Access to Public Records Act by the Marion County Clerk

Dear Mr. Richardson,

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk responded to your complaint via Mr. Scott Hohl, Chief of Staff. 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 November 20, 2013. You indicated an Open Door Law violation as well, but have not submitted any argument as to how a violation may have occurred. Open Door considerations will not be addressed in this Opinion.

BACKGROUND

Your complaint alleges the Marion County Clerk violated the Access to Public Records Act by denying producing records responsive to your request.

On or about November 6, 2013, you allegedly sent the Clerk a request for your arrest warrant for 1994. You have not submitted with your complaint the original request.

The Clerk argues that your request was not denied, but rather was never received. The Clerk has no record of the request on file. Furthermore, the Clerk indicates the request would require some additional information in order for the Clerk to identify the specific records you seek.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 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 Clerk’s 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).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

It is well recognized by this Office that offender communication from the Department of Correction is often delayed, misplaced, or simply lost. Logistically, this is a reality for inmates. Unfortunately, it can also be a stumbling block for offender access. You are certainly entitled to the records you seek. Please review the response from the Clerk and submit the requisite information so they are able to identify with reasonable particularity the records you seek. It is my sincere hope your communication is received by the Clerk and they will produce the records expeditiously.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Marion County Clerk did not violate the Access to Public Records Act.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Scott Hohl