



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

March 8, 2013

Mr. Howard Steele
DOC 875796
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 13-FC-82; Alleged Violation of the Access to Public Records Act by the Marion County Clerk

Dear Mr. Steele:

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.* Scott Hohl, Chief of Staff, responded on behalf of the Clerk. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that on February 1, 2013, you submitted a written request for certified records to the Clerk along with a check for \$5.00. You received a written reply from the Clerk, who also returned the check that had been submitted. You provide that the records that were produced by the Clerk were not the records that had been requested. As a result, on February 11, 2013 you submitted a second written request to the Clerk. As of March 7, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response to your February 11, 2013 request.

In response to your formal complaint, Mr. Hohl advised that the Clerk has no record of receiving your February 11, 2013 request. As the agency is now aware of the request, it will begin compiling the records that are responsive and mail them to you. As you are requesting records of your own case, there will be no fee.

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).

The Clerk maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Clerk received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Clerk received your request and did not respond to it within these timeframes, the Clerk acted contrary to the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it. As the Clerk is now aware of your request and has commenced the process of compiling all records that are responsive, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Scott Hohl