



STATE OF INDIANA

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July 26, 2011

Mr. Jason Burkett
DOC # 967203
3038 W 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 11-FC-158; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office

Dear Mr. Burkett:

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 response from the Clerk's chief of staff, Scott Hohl, is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request in writing for a copy of a legal malpractice complaint filed under 49D07-9207-CP-748. You state you requested the records on June 14, 2011 and had not received a response from the Clerk as of June 28, 2011, the date that you filed your formal complaint with the Public Access Counselor's Office.

In response to your formal complaint, the Clerk's office advised that they had no record of a records request from Jason Burkett. In addition, the Clerk provided that they did not have a record of any request received from Marion County Civil Court 7, the court where the requested complaint was filed.

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." I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The Clerk maintains that it did not receive a request from you. If the Clerk did not receive your request, it was not obligated to respond to it. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Op. 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. 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. I.C. §5-14-3-9(c). If the Clerk did receive your request and did not respond to it within these timeframes, the Clerk violated the APRA by failing to provide you with a response within seven (7) days that satisfied the requirements of section 9(c) of the APRA.

I trust that the Clerk will respond to your request in accordance with the APRA. If you want to ensure that your request reaches the Clerk in the future, I would advise you to send it via certified mail or make arrangements for your request to be hand-delivered to the Clerk's office.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Scott Hohl, Marion County Clerk's Office