



# STATE OF INDIANA

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August 6, 2012

Anthony W. Taylor  
DOC 910720  
3038 West 850 South  
Bunker Hill, Indiana 46914

*Re: Formal Complaint 12-FC-190; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion County Superior Court Criminal Division 5*

Dear Mr. Taylor:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Marion County Superior Court Criminal Division 5 violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Clerk on June 4, 2012, seeking certain records related to Cause No. 49-G05-0608-GB-146891. On June 20, 2012, you received records which you do not believe were responsive to your request. On June 21, 2012, you submitted further correspondence, clarifying your request, to which you have failed to receive any response.

In response to your formal complaint, Scott Hohl, Chief of Staff for the Marion County Clerk's Office ("Clerk"), provided that the Clerk has no record of receiving your request for records. Mr. Hohl further noted that the Clerk has no record of any request from Criminal Court 5 for records pertaining to you.

## 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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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. *See* I.C. § 5-14-3-9(c). 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.

The Clerk maintains that it did not receive your request. 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. *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 violated section 9 of the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it.

I would encourage you to resubmit your written request for the "Sentencing Order or Judgment of Conviction" directly with the Marion County Clerk's Office. The Clerk's address is 200 East Washington Street, Indianapolis, Indiana 46204. You may also consider submitting the request via certified U.S. Mail in order to confirm its receipt.

## CONCLUSION

Based on the foregoing, it is my opinion that the Clerk did not violate the APRA if it never received your written 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