



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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April 12, 2012

Master Sir Lando D. Logan  
DOC 973822  
4490 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 12-FC-73; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office*

Dear Mr. Logan:

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.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the Clerk. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that since September 19, 2011, you have on multiple occasions submitted written requests pursuant to the APRA to the Clerk for copies of the Probable Cause Affidavit, Supplemental Affidavit in Support of Probable Cause, Arrest Report, Chronological Case Summary, and a list of suspected crimes of the defendant provided in *State of Indiana v. LaDarrell Lange*, Cause No. 49-G05-0203-FB-086093. On January 15, 2012, you further allege that you have submitted a money order to the Clerk in the amount of \$17.00 for any fees associated with the request. As of March 19, 2012, the date you filed your formal complaint with the Public Access Counselor, you advise that you have yet to receive any response from the Clerk.

In response to your formal complaint, Ms. Newsom advised that the Clerk has no record of receiving a records request or a money order from you. The Clerk indicated that the request may have been received and date stamped by the court in which the case was filed. Regardless, you have failed to timely file your formal complaint with the Public Access Counselor, as more than thirty days have passed since you allege that you were denied access.

If the Clerk had received your request, it would have denied the request pursuant to I.C. § 5-14-3-4(b)(23). The Clerk indicated that you and Mr. Lange, the subject of your records request, are both Offenders and housed at the Pendleton Correctional

Facility. As such, disclosing the records to you would concern and affect the security of a correctional facility and the Clerk would have had discretion to deny you request pursuant to I.C. § 5-14-3-4(b)(23).

### 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).

I.C. § 5-14-5-7(a) provides that a person that chooses to file a formal complaint with the counselor must do so not later than thirty days after the denial. You provide that your initial records request was submitted to the Clerk on September 19, 2011. It would also appear that you are alleging that you submitted the same request on multiple occasions, most recently on March 13, 2012. As such, it is my opinion that you would have standing to submit a formal complaint only as to your most recent alleged submission that occurred on March 13, 2012.

The Clerk maintains that it did not receive your request or money order. 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 or money order. 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 did receive your request and did not respond to it within these timeframes, the Clerk violated the APRA by failing to comply with the requirements of section 9. However, if the Clerk did not receive your request, it was not obligated to respond to it.

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.

It is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). You are currently housed at the Pendleton Correctional Facility. The



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APRA contains an exception to disclosure to an "offender" for a record that contains information that would concern or affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
- (ii) the victim of a crime; or
- (iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility. I.C. § 5-14-3-4(b)(23).

The records you sought from the Clerk concerned LaDarrell Lange, who is also considered an "offender" pursuant to the APRA and housed at the Pendleton Correctional Facility. Thus, the Clerk could act within its discretion to withhold records that contain personal information that would concern or affect the security of the Pendleton Correctional Facility. *See Opinions of the Public Access Counselor 11-FC-192; 11-FC-231; 11-FC-273.* As such, it is my opinion that if the Clerk had received your request, it would not have violated the APRA by denying it pursuant to I.C. § 5-14-3-4(b)(23).

## CONCLUSION

Based on the foregoing, it is my opinion that the Clerk did not violate the APRA if it never received your request for records. Further, if the Clerk had received your request, it could have properly denied the request pursuant to I.C. § 5-14-3-4(b)(23).

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Andrea Brandes Newsom