



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

Marvin F. Taylor, Sr.)

Complainant)

v.)

CLERK OF THE MARION COUNTY)
CIRCUIT COURT)

Respondent)

16-FC-299, 300 & 307
(Consolidated)

ADVISORY OPINION

January 19, 2017

This advisory opinion is in response to a formal complaint alleging the Clerk of the Marion County Court (“Clerk”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3 et. seq. The Clerk responded via Mr. Russell Hollis, Deputy Director of the Clerk’s Office, the Honorable Judge Marc Rothernberg, and Ms. Emily A. VanOsdol, Esq., Court Administrator. Their responses are enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on December 5, 2016 and December 12, 2016.

BACKGROUND

The Complaint dated December 5, 2016, alleges the Marion County Clerk violated the Open Door Law by failing to respond to a public records request.

On or about November 2, 2016, Complainant submitted a public records request to the Clerk seeking court records and order appointing a judge pro tem to preside over your case. As of the filing of the formal complaint, Complainant had not received a response.



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The Clerk responded to the formal complaint by explaining the manner in which the request was received. The request initially went to the Superior Court Staff, who then forwarded it to Criminal Court 2 which was entered into the case management system. It was never received by the Clerk, as the envelope was addressed to the Superior Court. Furthermore, the presiding judge in the case responded to the complaint asserting the public records request was identical to one submitted (and responded to) in June 2015. That response is enclosed as well. The responses indicate no documents exist, as no official order is needed for a sitting magistrate to be “appointed” as judge pro tem in the criminal court in which they serve.

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 Indiana Code § 5-14-3-1*. The Marion County Clerk is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Clerk’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request is submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana 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.

There are several reasons why the request did not merit a response from the Clerk’s Office. The first is that the envelope in which the request was submitted was addressed to the Superior Court. Therefore, that Court was the receiving agency charged with any response. Secondly, the request had already been made and denied in June 2015. A public agency is not obligated to provide records which do not exist. The request was for an order appointing a magistrate to preside over a case. An order is not required for a magistrate to conduct a proceeding under Indiana Code § 33-23-5-5. Pursuant to Indiana Code § 33-33-49-2, each Marion County Court may have a magistrate with those powers and duties.

No violation of the public access laws can exist in a situation when a government entity is not required to create a record and no such records exists. Moreover, an agency cannot be expected to respond when a request is addressed to another agency.



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CONCLUSION

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

A handwritten signature in black ink, appearing to read "LH Britt".

Luke H. Britt
Public Access Counselor

Distribution:

Mr. Russell Hollis
Hon. Judge Marc Rothenberg