



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

OPINION OF THE PUBLIC ACCESS COUNSELOR

JAMES D. WATKINS,

Complainant

v.

MARION COUNTY CLERK

Respondent

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17-FC-107

ADVISORY OPINION

June 13, 2017

This advisory opinion is in response to the formal complaint alleging the Marion County Clerk’s Office (“Clerk”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. This Office notified the Clerk of the complaint on May 8, 2017, but has yet to receive a response. Pursuant to Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 8, 2017.

BACKGROUND

The formal complaint alleges the Clerk violated the APRA by denying access to records requested. In a records request dated March 31, 2017, and filed by the Clerk on April 18, 2017, the Complainant requested a copy of his sentencing order and judgment of conviction. The Clerk subsequently mailed the Complainant an Abstract of Judgment. The Complainant filed a complaint dated April 30, 2017, which our Office received on May 8, 2017.

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



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County Clerk's Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. 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)*.

The Abstract of Judgment sent to the Complainant, State Form 8466, contains information regarding both the judgment against the defendant and the sentence the defendant received. The request, however, was for a copy of the sentencing order and the judgment. Absent any contradictory evidence from the Clerk, these are both documents that should be in the Clerk's possession. Without the Clerk's response, I am unsure why the Abstract was sent instead of the requested documents. While the Abstract may have some or all of the information the Complainant sought, the Complainant has the right to receive the records he requested, unless those records are confidential or otherwise allowed to be withheld under the APRA.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor to strongly recommend that the Clerk either produce the sentencing order and judgment requested or deny Complainant's request and provide the statutory exemption authorizing the withholding of the public records.

As a reminder to the Clerk, Indiana Code § 5-14-5-5 provides that public agencies are to cooperate with the Public Access Counselor "in any investigation or proceeding under this chapter."

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. Britt", written over a white background.

Public Access Counselor

Cc: Myla Eldridge