



# STATE OF INDIANA

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July 14, 2009

Bradley Harris  
DOC #163953  
3038 West 850 South  
Bunker Hill, Indiana 46914

*Re: Formal Complaint 09-FC-156; Alleged Violation of the Access to Public Records Act by the Wayne County Clerk of the Courts*

Dear Mr. Harris:

This advisory opinion is in response to your formal complaint alleging the Wayne County Clerk of the Courts ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for a copy of a record. The Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk did not violate the APRA by not responding to a request she did not receive.

## BACKGROUND

You allege that on June 10, 2009 you sent to the Clerk a request for a copy of a record. You filed the present complaint on July 9 (postmarked on July 7), alleging you had received no response to the request.

The Clerk responded to the complaint by letter dated July 9. The Clerk contends she did not receive the June request from you. The Clerk indicates the most recent request her office received from you was dated October 16, 2008, and the records show the office responded to you on October 20, 2008. Regarding the record you have requested, the Clerk contends her office maintains no record responsive to the request.

## ANALYSIS

The public policy of the APRA states, "(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 clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours unless the public records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). 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. I.C. § 5-14-3-9(b).

Here the Clerk asserts her office did not receive your request. If the Clerk did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Clerk did not receive your request, her office did not violate the APRA by not responding.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk did not violate the APRA by not responding to a request she did not receive.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Jo Ann Stewart, Wayne County Clerk of the Courts