



STATE OF INDIANA

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March 4, 2009

Sherman Van Dyke
3516 North Rural Street
Indianapolis, Indiana 46218

Re: Formal Complaint 09-FC-44; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office

Dear Mr. Van Dyke:

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

BACKGROUND

You allege that on January 22, 2009 you submitted a request to the Office for copies of records related to a specific cause number. You filed the present complaint on February 10 (postmarked February 6), alleging the Office failed to respond to the request.

The Office responded to the complaint by electronic mail message dated February 11 from Chief of Staff Scott Hohl. The Office contends it did not receive your request. The Office indicates the executive office area was undergoing construction at the time of your request which could mean the request was received but misplaced. Regarding the specific request, the Office indicates the cause number you provided is an invalid cause number. Further, because there are multiple cases involving the individual you mentioned, the Office cannot identify which records you seek.

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 Office 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 Office 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 Office asserts it did not receive your request. If the Office 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 Office did not receive your request, it did not violate the APRA by not responding.

Further, the Office asserts that the cause number for which you requested records is not a valid cause number. As such, the Office cannot process the request. You should check to be sure you have the correct cause number and re-submit your request so the Office can provide you with the requested records.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Scott Hohl, Marion County Clerk's Office