



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 12, 2008

Howard Steele
DOC #875796
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Informal Inquiry 08-INF-33 regarding the Clerk of the Marion Circuit Court

Dear Mr. Steele:

This is in response to your informal inquiry dated August 4, 2008 which I received August 7, 2008. You write to inquire about records you have requested from the Clerk of the Marion Circuit Court ("Clerk") pursuant to the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). You allege that you requested records from the Clerk by letter dated July 15, 2008 and have received no response from the Clerk. Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You allege you submitted to the Clerk on July 15 a request for access to a number of court records. You allege that you have received no response from the Clerk. You write to seek assistance in obtaining the records.

The Clerk responded to your request by letter dated August 8 from Chief of Staff Teresa Hall. Ms. Hall indicates the office has a record of having received and fulfilled a request from you at some time after June 25. The Clerk did receive additional correspondence from you on July 17, but the Clerk's office did not respond to that request, believing it was identical to the previous request. Further, the Clerk contends that you are requesting a record which has not been created by the Clerk's office. As a result, the Clerk's office will send you copies of your entire file so you will have everything maintained in the Clerks' office.

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's office is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk's 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 Clerk received your July 15 request but did not provide you any copies because the Clerk's office thought it was identical to the request which had been fulfilled around June 25. While the APRA requires an agency to provide access to inspect and copy records, the APRA provides that an agency is only required to provide one copy of a record. *See* I.C. § 5-14-3-8(e). As such, if your second request was for the same records as the first request, the Clerk would not be obligated to provide additional copies. Here, though, since your request was for different records, the Clerk's office is required to respond to the request.

The Clerk indicates that you request records which do not exist. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. As such, the Clerk is not required to create records you request if they do not exist. The Clerk's solution to provide you all records it maintains related to your file goes beyond what is required by the APRA, and as such I trust it will satisfy your request.

Please do not hesitate to contact our office if we can be of further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Teresa Hall, Chief of Staff, Clerk of the Marion Circuit Court