



# STATE OF INDIANA

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July 29, 2014

Dexter Berry #114153  
Pendleton Correctional Facility  
5124 W. Reformatory Rd.  
Pendleton, IN 46064

*Re: Formal Complaint 14-FC-138; Alleged Violation of the Access to Public Records Act by the Marion County Clerk*

Dear Mr. Berry,

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. Scott Hohl, Chief of Staff, has responded to your complaint; it is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 2, 2014.

## BACKGROUND

Your complaint received July 2, 2014, alleges the Marion County Clerk violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On an unspecified date in April, 2014 you allegedly sent the Clerk a public records request seeking certain information regarding your conviction. You did not receive an acknowledgement in return. In its response, the Clerk's Office argues it never received your request.

## DISCUSSION

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 Ind. Code § 5-14-3-1. The Marion County Clerk is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect

and copy the Clerk's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. 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.

Unfortunately, it appears your request may or may not have been a casualty of the prison mailing process which can be difficult to navigate due to its inherent logistical challenges. Without a copy of your original request or when it was sent, I cannot make any kind of factual determination of whether the Clerk received your request. I encourage you to send another request and keep a copy of it, as the records you seek appear to be disclosable to you.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Marion County Clerk has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Scott Hohl