

January 30, 2008

Marvin Taylor Sr.
DOC #995801
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 08-FC-22; Alleged Violation of the Access to Public Records Act by the Clerk of Marion Circuit Court

Dear Mr. Taylor:

This is in response to your formal complaint alleging the Clerk of Marion Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Clerk's response to your complaint is enclosed for your reference. It is my opinion the Clerk has not violated the APRA.

BACKGROUND

In your complaint you allege that you submitted a request for copies of records to the Clerk on December 7, 2007. Specifically, you seek a copy of an arrest warrant. You allege you have been denied access to the record. You mailed this complaint on December 27, and I received it on December 31.

The Clerk responded to your complaint by letter dated January 10, 2008 from Teresa Hall. Ms. Hall indicates that your request was sent to Criminal Court 2, which did not forward the request to the Clerk. Ms. Hall further indicates that now that the Clerk has received the request, the Clerk will work to determine whether the Clerk maintains a record responsive to your request.

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." 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. 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's office asserts it did not receive your request. If the Clerk's office did receive your request, it would have a duty under the APRA to respond within seven days of receipt. 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's office did not receive your request, it did not violate the APRA by not responding.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

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