



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

November 20, 2009

Mr. Marcus Richardson  
DOC # 944814  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, IN 47838-2222

*Re: Formal Complaint 09-FC-251; Alleged Violation of the Access to Public Records Act by the Marion County Clerk*

Dear Mr. Richardson:

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.* For the following reasons, my opinion is that the Clerk did not violate the APRA.

## BACKGROUND

In your complaint, you allege that you requested "a copy of the '1994' [sic] arrest warrant issued by the clerk of the court on September 30, 1994. I also requested to review the date and time the warrant was executed." You further allege that the Clerk never responded to your request.

My office forwarded a copy of your complaint to the Clerk. The response of Scott Hohl, chief of staff for the Clerk, is enclosed for your reference. Mr. Hohl states that the Clerk has no record of receiving a request for public records from you. He also asserts that the Clerk requires more information before your records can be found. According to Mr. Hohl, it appears that you directed your request to Criminal Court 1, which is why it was not brought to the attention of the Clerk's 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 does not dispute that it constitutes 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 Clerk's public records 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).

The Clerk maintains it 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 (7) 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, it 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 it did not receive.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Scott Hohl, Marion County Clerk's Office