



STATE OF INDIANA

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February 9, 2010

Mr. Samuel R. Hampton
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 10-FC-15; Alleged Violation of the Access to Public Records Act by the Marion County Clerk

Dear Mr. Hampton:

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.* The Clerk's response to your complaint is enclosed for your reference.

BACKGROUND

According to your complaint, you allege that on December 15, 2009, you requested a "certified and bondified [sic] probable cause affidavit, and abstract judgment, and a complete chronological case summary report" in a certain case from the Clerk and the Clerk's court reporter. You further allege that the Clerk failed to respond to your complaint.

Scott Hohl, the Clerk's chief of staff, responded to your complaint on behalf of the Clerk. Mr. Hohl maintains that the Clerk's office has no record of any public records request from you.

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." Ind. Code § 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 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).

Here, the Clerk maintains that it did not receive a request from you. If the Clerk did not receive your request, it was not obligated to respond to it. As I am not a finder of fact, I express no opinion as to whether or not Clerk received your request. Under the APRA, if a 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). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). If the Clerk did receive your request and did not respond to it within these timeframes, the Clerk violated the APRA by failing to provide you with a response within seven (7) days that satisfied the requirements of section 9(c) of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA by failing to respond to a request that it did not receive.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Scott Hohl, Marion County Clerk's Office