



STATE OF INDIANA

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January 26, 2011

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

Re: Formal Complaint 10-FC-326; 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

I note that this complaint is similar to a previous complaint that you filed and that formed the basis of *Op. of the Public Access Counselor 10-FC-15*. According to that complaint, on December 15, 2009, you requested records from the Clerk and the Clerk's court reporter, but you received no response to your request. 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 had no record of any public records request from you. I opined that the Clerk did not violate the APRA if the Clerk did not receive your request.

Similarly here, you allege that you requested records from the "Clerk and Court Reporter," but never received a response. Mr. Hohl again states that the Clerk has no record of a request from you. He states that your request could have been delivered directly to a court due to the fact that you addressed it to both the Clerk and the court reporter. Mr. Hohl states that he would be happy to process your request if you send it to the Clerk's office to his attention, but he will need additional specificity regarding the records you are requesting because he cannot tell from the copy of your original request what records you seek.

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, again, 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 explained in the previous advisory opinion, I am not a finder of fact. *See Op. of the Public Access Counselor 10-FC-15*. Consequently, 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.

I trust that the Clerk will respond to your request in accordance if the APRA. If you want to ensure that your request reaches the Clerk in the future, I would advise you to send it via certified mail or make arrangements for your request to be hand-delivered to the Clerk’s office. I would also encourage you to make your request to only the Clerk rather than “Clerk and Court Reporter” to avoid additional confusion.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA if the Clerk never received your request.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Scott Hohl, Marion County Clerk’s Office