



STATE OF INDIANA

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July 6, 2011

Mr. Rocky M. Shroyer
DOC#: 956193
4490 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 11-FC-138; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court - Criminal Court 5

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court - Criminal Court 5 ("Court") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* Scott Hohl, chief of staff for the Marion County Clerk ("Clerk"), responded on behalf of the Court. Mr. Hohl's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on April 25, 2011, you served a records request upon the Clerk. In that request, you asked for a copy of an affidavit of probable cause in a particular case. As of May 30th, you had not received a response to that request.

In response to your complaint, Mr. Hohl states that the Clerk's office has no record of a request from you. Moreover, although it appears that you may have sent your request to the Court directly, the office also has no record of a request from the Court pertaining to you. Finally, Mr. Hohl states that you should submit your request to the Marion County Prosecutor, which maintains affidavits of probable cause. The courts do not always maintain affidavits because they are not always included in the courts' files.

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 Court is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Court’s public records during regular business hours unless the public records are excepted from disclosure under the APRA. I.C. § 5-14-3-3(a).

According to Mr. Hohl, the Court and Clerk have no record of a request from you. If the Court did receive your request, it had a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). However, an agency cannot respond to a request it did not receive. Therefore, if neither the Court nor the Clerk received your request, the Court did not violate the APRA by not responding. *See Opinion of the Public Access Counselor 09-FC-44.*

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Scott Hohl