



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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May 3, 2012

Mr. Samuel R. Hampton
DOC 195123
Pendleton Correctional Facility
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-107; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office

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.* Scott Hohl, Chief of Staff, responded on behalf of the Clerk. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request via Certified U.S. Mail to the Clerk on March 18, 2012. Due to your recent facility transfer, you are unable to provide a copy of the certified receipt issued by the U.S. Postal Service confirming the receipt of your records request by the Clerk. Regardless, as of April 23, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, the Clerk has not responded to your request in any fashion.

In response to your formal complaint, Mr. Hohl advised that the Clerk has provided all records in its possession that are responsive to your request. You have been informed by the Clerk that it does not maintain certain records that you have repeatedly sought and have been advised to contact other agencies who may possibly maintain the records that are the subject of 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." *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy..."). The APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). The Public Access Counselor has issued multiple opinions that have provided that a public agency is not required to provide duplicative copies of the same record. *See Opinions of the Public Access Counselor 07-FC-19; 08-FC-75; and 08-FC-259*.

As applicable here, the Clerk has advised that you have been provided with all records that are responsive to your request that are maintained by the Clerk. You have been advised that certain records that you made repeated requests for are not maintained by the Clerk and that you should direct your request to other agencies that may have the records that you seek. As such, it is my opinion that the Clerk complied with the requirements of the APRA as it has provided to you one copy of all records maintained by the Clerk that are responsive to your request.



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CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Scott Hohl