



# STATE OF INDIANA

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August 29, 2012

William Holly  
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PO Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 12-FC-219; Alleged Violation of the Access to Public Records Act by the Marion County Clerk*

Dear Mr. Holly:

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 for information about your appeal to the Clerk on July 27, 2012. As of August 3, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Clerk has failed to respond in any fashion to your request.

Mr. Hohl advised that the Clerk has no record of receiving a request for public records or information 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." *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).

The Clerk maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of

fact. *See Opinion 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. *See* 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. *See* I.C. §5-14-3-9(c). If the Clerk received your request and did not respond to it within these timeframes, the Clerk acted contrary to the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it. If you want to ensure that your request reaches the Clerk in the future, you may consider sending the request via certified mail or making arrangements for your request to be hand-delivered.

Should you resubmit your request, I would note that the APRA requires that a request for inspection or copying must identify with reasonable particularity the *record* being requested (emphasis added). *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request. *Opinion of the Public Access Counselor 04-FC-38*.

Further, public agencies are not obligated to create records in response to a request or to answer generalized inquiries. *See Op. of the Public Access Counselor 10-FC-120; 11-FC-07*. After reviewing the request provided with your formal complaint, you primarily requested that the Clerk answer various questions regarding the appellate process, as opposed to actually providing records. (e.g. “Have you received the appeal document in the above cause?” “Have you applied an appeal docket number?”). To the extent that your future requests of the Clerk seek answers to generalized inquiries, rather than a request for records, it is my opinion that the APRA would be applicable.

## CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage  
Public Access Counselor

cc: Scott Hohl