



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
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May 16, 2012

William Holly  
DOC 946422  
PO Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 12-FC-97; Alleged Violation of the Access to Public Records Act by the Marion County, Center Township Clerk of Courts*

Dear Mr. Holly:

This advisory opinion is in response to your formal complaint alleging the Marion County, Center Township Clerk of Courts ("Center Township Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Center Township Clerk inquiring as to the status of your appeal and your Motion to Correct Error under Cause No. 49-K01-1109-SC-009282. As of April 16, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Center Township Clerk has failed to respond to your request in any fashion.

In response to your formal complaint, Scott Hohl, Chief of Staff for the Marion County Clerk's Office ("Clerk"), provided that the Clerk has no record of receiving your request for records. Mr. Hohl noted that the Clerk's Office does not process requests for records received for the Center Township, Marion County Small Claims Court.

After reviewing Mr. Hohl's response to your formal complaint, our office forwarded a copy of your complaint to the Center Township Clerk. Judge Michelle Smith Scott responded to your formal complaint and advised that your court case was dismissed on January 18, 2012 and you thereafter filed a Motion to Correct Error on January 30, 2012. After filing the Motion to Correct Error, you then submitted written inquiries regarding the status of your Motion to Correct Error. The Court has not denied any request that you have submitted for records of the Court or Center Township Clerk. Further, your Request for Appeal has now been processed by the Center Township Clerk.

## 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 Center Township 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 Center Township 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 twenty-four 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 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.

The APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *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*.

After reviewing your request that you submitted to the Center Township Clerk, it is my opinion that your request sought information, (i.e. status updates regarding your appeal and Motion to Correct Error), rather than records of the agency. To the extent that Center Township Clerk maintained records that were responsive to your request, it would

be required to produce said records, minus any applicable exceptions. As your request sought information, it is my opinion that the Center Township Clerk did not violate the APRA by failing to produce records that it did not maintain or create a record in response to your request.

#### CONCLUSION

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

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 "H".

Joseph B. Hoage  
Public Access Counselor

cc: Judge Michelle Smith Scott and Scott Hohl