



STATE OF INDIANA

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June 3, 2013

Mr. Terry L. Criss
DOC 864075
P.O. Box A
New Castle, Indiana 47362

Re: Formal Complaint 13-FC-156; Alleged Violation of the Access to Public Records Act by the Marion County Clerk

Dear Mr. Criss:

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 provide that you submitted a written request for records to the Clerk. Although not entirely clear, you allege that the Clerk either failed to respond in any fashion to your request or failed to meet its burden in denying your request.

In response to your formal complaint, Mr. Hohl advised that the Clerk has no record of receiving your request. Mr. Hohl advised that if you resubmit your request to the Clerk to his attention, he will provide all records responsive to the request that are maintained by the Clerk. Mr. Hohl asked that you clearly indicate the records that are sought and the corresponding cause number.

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. As indicated by Mr. Hohl, if you submit your request to the Clerk to his attention, he will commence in gathering and providing all records responsive to the request that are maintained by the Clerk.

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 stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Scott Hohl