



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

January 8, 2014

Mr. Terrance D. Flynn #159883  
Indiana State Prison  
One Park Row  
Michigan City, IN 46360

*Re: Formal Complaint 13-FC-345; Alleged Violation of the Access to Public Records Act by the St. Joseph County Clerk*

Dear Mr. Flynn,

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk, Ms. Terri J. Rethlake, responded to your complaint. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 16, 2013.

## BACKGROUND

Your complaint alleges the St. Joseph County Clerk violated the Access to Public Records Act by denying producing records responsive to your request.

On or about October 25, 2006, you requested from the Clerk a transcript and related documents from an April 10, 2006 *ex parte* hearing. You also requested other documents from the judge and prosecutor in your case. The Clerk has not been responsive to your request.

The Clerk responded to your formal complaint by stating the April 10, 2006 hearing was sealed by the judge. Furthermore, the Clerk argues she is not the custodian of the additional records you seek.

## ANALYSIS

The public policy of the APRA states that "a (p)roviding person 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 Ind. Code § 5-14-3-1. The St. Joseph County Clerk's Office is a public agency for the

purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Clerk provided a chronological case summary ("CCS") of your criminal case. The CCS indicates the ex parte hearing was sealed by the judge. The APRA speaks to sealed judicial public record in Ind. Code § 5-14-3-5.5. That statute lists several conditions which must take place before a record is sealed. It is unclear if those steps were taken or if the Court considered them confidential for another reason. I am not a finder of fact and cannot determine with accuracy why the ex parte record is sealed. The only way to unseal those records is to petition the judiciary to do so.

As for the additional documentation you seek, you are entitled to that information under the APRA; however, it appears the St. Joseph County Clerk is not the custodian of the records. The Clerk directs you to submit a records request to the appropriate agency which would be the individual Court or the St. Joseph County Prosecutor's Office.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Public Access Counselor the St. Joseph County Clerk did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Terri J. Rethlake