



# STATE OF INDIANA

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September 15, 2014

Mr. Gary Otto # 905901  
Putnamville Correctional Facility  
1946 West U.S. Highway 40  
Greencastle, IN 46135

*Re: Formal Complaint 14-FC-179 (consolidated); Alleged Violation of the Access to Public Records Act by the Marion County Clerk No. 6*

Dear Mr. Otto,

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk of Court No. 6 ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk has provided a response to your complaint via Mr. Scott Hohl. His response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint(s) received by the Office of the Public Access Counselor on August 15, 2014<sup>1</sup>.

## BACKGROUND

Your complaint dated May 14, 2014 alleges the Marion County Clerk violated the Access to Public Records Act by not providing records responsive to your requests in violation of Ind. Code § 5-14-3-3.

On or about April 16, 2014, you submitted a public records request to the Clerk seeking a report from the court from your underlying criminal case. You did not receive a response. The Clerk responded on August 18, 2014 arguing the Clerk's office did not receive the response at the appropriate court to be addressed is Marion County Criminal Court No. 5.

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<sup>1</sup> The issuance of this Opinion was delayed due to requesting more information from the complainant. All necessary materials were submitted by August 15, 2014.

## 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 Ind. Code § 5-14-3-1. The Marion County Court No. 6 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.

I am not familiar with the Marion County judiciary’s method of handling public records requests. However, it stands to reason that because the individual courts are public agencies subject to the APRA, you are entitled to an acknowledgement of your request even if it is served on the wrong court. The individual court may deny your request, but must also state the reason, in writing, for the denial. See Ind. Code § 5-14-3-9(d).

The Marion County Court Clerk’s office should be able to at least facilitate the production of documents and encourage them here to do so. Although your request was served on the wrong court, now that they have been put on notice of the information you seek, it is my expectation this Opinion be the catalyst for the production of responsive records. While the Marion County Court Clerk has not violated the APRA, the Criminal Court No. 6 has done so by not acknowledging your request.

## CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Marion County Court No. 6 has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be the initials 'JAB' with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Scott Hohl