



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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March 13, 2014

Mr. Michael A. Christianson #135489
Miami Correctional Facility
3038 West 850 South
Bunker Hill, IN 46914

Re: Formal Complaint 14-FC-24; Alleged Violation of the Access to Public Records Act by the Marion County Clerk

Dear Mr. Christianson,

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.* The Clerk has responded via Scott Hohl, Chief of Staff. His 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 February 11, 2014.

BACKGROUND

Your complaint dated February 4, 2014, alleges the Marion County Clerk violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On January 13, 2014, you allegedly submitted to the Clerk a public records request seeking a copy of the "Complaint/Action for Mandate filed in [49C01-1008-PL-14030]". You also remitted \$3.00 for a copy of the document. The Clerk sent the money back along with a printout of their online case management portal which purports to run your name as a search field as a petitioner or respondent. Neither the name Michael Christianson nor the cause number 49C01-1008-PL-14030 appeared in their system. Subsequent to your formal complaint, the Clerk reiterated it had no records responsive to your request as your name or the cause number in question does not appear in their case management system.

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 Clerk 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.

It appears as if the Clerk ran your name and the cause number through the case management software in an attempt to retrieve the documents you were seeking. Based on that particular search, the Clerk concluded they do not have records responsive to your request. Consequently, the Clerk cannot be expected to produce records it does not maintain.

CONCLUSION

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

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Scott Hohl