



STATE OF INDIANA

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March 13, 2014

Mr. James F. Noel #230645
Pendleton Correctional Facility
5124 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 14-FC-26; Alleged Violation of the Access to Public Records Act by the Marion County Clerk

Dear Mr. Noel,

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 12, 2014.

BACKGROUND

Your complaint dated February 12, 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 25, 2013, you allegedly submitted to the Clerk a public records request seeking a copy of a probable cause affidavit in Cause No. 49G02-1203-PC-016900. The Clerk has responded stating they never received the request and the probable cause affidavit is likely maintained by the Marion County Prosecutor's Office.

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.

You did not submit a copy of your original request along with your formal complaint. If the Clerk had never received your request, then they cannot be reasonably expected to produce the records you seek. In any case, the Clerk argues the Marion County Clerk's Office does not maintain probable cause affidavit. Accordingly, Mr. Hohl directs you in his response to contact the Marion County Prosecutor's Office for the document.

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 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Scott Hohl