



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)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 9, 2016

Oscar Iraheta-Rosales - #194882
Wabash Valley Correctional Facility
6908 South Old US Hwy 41
Carlisle, Indiana 47838

Re: Formal Complaint 16-FC-188; Alleged Violation of the Access to Public Records Act by the Marion County Clerk

Dear Mr. Iraheta-Rosales:

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Clerk responded via Mr. Russell Hollis, Deputy Director. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 5, 2016.

BACKGROUND

Your complaint dated August 1, 2016, alleges the Marion County Clerk violated the Access to Public Records Act by failing to provide the records you requested. On or about July 21, 2016, you submitted a public records request to the Marion County Clerk's Office for a various records. As of the date of the filing of your formal complaint, you had not received a response.

The Clerk responded to your complaint by stating they never received the request in question. Additionally, they assert they are not the custodian of the records and refer you to the Court directly which may have the records you seek.

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 Indiana Code § 5-14-3-1*. The Marion County Clerk is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Clerk's disclosable public records during

regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a).*

From my experience and knowledge with the Department of Correction prison system, there are occasions where inmate correspondence is not delivered to the intended recipient or is accompanied with a delay. This is an unfortunate but understandable casualty of the prison mail system and facility security. My recommendation is to re-submit your request to the Court identified in the Clerk's response. It is my sincere hope you receive the records you request in a timely manner.

CONCLUSION

Based on the forging, in 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 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Russell Hollis