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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DUWARD T. ROBY,  
*Complainant,*

v.

CLARK COUNTY CLERK OF COURTS  
AND  
CLARK COUNTY SHERIFF'S DEPARTMENT  
*Respondent.*

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Formal Complaint No.  
17-FC-137

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Clark County Clerk ("Clerk") and Clark County Sheriff ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code §§ 5-14-3-1-10. The County Attorney, R. Scott Lewis, responded on behalf of the Clerk and the Sheriff. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 19, 2017.

## **BACKGROUND**

On or around March 23, 2017, the Complainant mailed a request for access to public records to the Clark County Sheriff requesting several documents related to the filming of the A&E television series *60 Days In*, including the contract signed by the Complainant agreeing to appear on the television program, the contracts signed by other participants from the first and second season, a copy of all audio or video recordings that included the Complainant, a copy of all recorded conversations between the participants in the first two seasons of the program, and a copy of “all recorded conversations of confidential informants that checked out of 3C-Block and 3D-Block during the 60 Days In television program from season 1 and season 2.” The Clark County Sheriff’s Office responded on or around May 12, 2017, via the Chief Deputy Sheriff, notifying the Complainant that the Sheriff’s Office did not possess any of the records requested by the Complainant because they were “all in the possession of A&E Network and would need to be requested through them.”

Around April 10, 2017, the Complainant mailed a request for access to public records related to a fire at the correctional facility that occurred on January 19, 2017. He sent the request to the Clark County Clerk of the Court, the Clark County Sheriff, the Clark County Fire Department in Jeffersonville, IN, and the Indiana State Police Department. The Complainant requested “dispatched minutes” from 2:50 AM to 8:00 AM on January 19, 2017 from the Clark County Sheriff, Clark County Fire Department, and Indiana State Police. The Complainant also requested photos of the fire’s location and asked what was used to extinguish the fire and

what chemicals were used to clean the vents where the fire occurred. The Complainant did not receive an acknowledgment of this request and filed a complaint with my Office dated June 14, 2017, and received by my Office on June 19, 2017. The Complainant names the Clerk of the Courts for Clark County and the Clark County Sheriff as being responsible for denying his request for records.

The Complainant filed a second complaint with this office on July 14, 2017, which addresses the same matter as the complaint received on June 19, 2017. So, I will address both complaints in this opinion simultaneously.

My Office notified the Clark County Sheriff and the Clerk of the Courts for Clark County of the formal complaint on June 20, 2017. The Clark County Attorney responded on behalf of both the Sheriff and the Clerk of the Courts. We received the County's response on July 5, 2017.

In the response, the County states that the Sheriff's Office did not receive the Complainant's May 12 request until May 23, 2017, and that the lapse was likely due to the "lengthy process for a prisoner to go through the indigency process to obtain postage and to mail documents." The Sheriff's Office sent a response to the Complainant on the same day. The County emphasized in its response to my Office that the Sheriff's Office does not possess any records responsive to the Complainant's requests, because those records would be in the possession of A&E Network.

The County also states the Complainant's April 10 request was stamped as filed on May 9, 2017, and was filed with the Clark County Circuit Court No. 1 under Case No. 10C01-0902-FB-000047 on May 9, 2017. The County indicates that

the case summary shows where the receipt of this request and a copy of the request itself was sent to the Complainant's legal counsel. The Complainant's counsel did not forward this request to the Sheriff or to the Clerk. The County states that the first time the Clerk and the Sheriff received this request for records was when they received my Office's notice of the complaint. The County also argues that because the Court filed the request the day it received the request and sent a notice to the Complainant's counsel, they acknowledged the request as required under APRA.

The County provides in the response that the Clerk possesses no records responsive to the Complainant's request, and the Sheriff only possesses photographs of the fire location. Copies of these photos were provided to my office and will be forwarded to the Complainant. The County also states that the Clark County Office of Emergency Communications or the Indiana State Police might have dispatch minutes responsive to the request, but Clark County does not. The County indicates that the request for what was used to extinguish the fire and clean up the fire site are questions, not requests for records, but also provides that neither the Clerk nor the Sheriff possess any records responsive to those questions. Finally, the County notes that there is not a Clark County Fire Department, and that the City of Jeffersonville Fire Department responded to the fire.

#### **ANALYSIS**

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." Ind. Code § 5-14-3-1. The Clark County Clerk and Sheriff's

Department are public agencies for the purposes of the APRA. *See* Ind. Code § 5-14-3-2(n). So, any person has the right to inspect and copy the Sheriff's and 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* Ind. Code § 5-14-3-3(a).

It stands to reason that many of the records requested are not in possession or custody of either the Clerk or the Sheriff. Some may not be public records at all and belong to the private production company producing the television program in question.

It appears as if the requests themselves took many a turn before being received by the Sheriff and the Clerk. This is not atypical with inmate correspondence and public agencies are not at fault for those logistical difficulties. Because the Clark County agencies do not have the public records requested, the Complainant, as indicated in the response, should direct the requests to other governmental agencies, if he has not done so already. A public agency is not responsible for records not in its possession or control. It appears as if the Clerk and Sheriff's Department have acted in a manner consistent with APRA.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor the Clark County Clerk and Sheriff's Department did not violate the Access to public Records Act.

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