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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BRIAN K. WYNNE,  
*Complainant,*

v.

MARION COUNTY CLERK'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
17-FC-165

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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 a formal complaint alleging the Marion County Clerk ("Clerk") violated the Access to Public Records Act<sup>1</sup> ("APRA"). The Clerk responded to the complaint via Mr. David J. Lichtenberger. The response is enclosed for review. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints received by the Office of the Public Access Counselor on July 10, 2017.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10.

## **BACKGROUND**

Brian K. Wynne (“Complainant”) submitted a request for public records on June 15, 2017. As of July 1, he had not received an acknowledgement from the Clerk’s Office, so he filed a formal complaint with this Office. The Complainant requested records of any requests made from the Johnson County Prosecutor’s Office in connection with several of his listed criminal proceedings.

In its response, the Clerk’s Office explained that the request was postmarked June 19, 2017, however, the Clerk did not receive the request until July 12, 2017. In any event, after a search, the records were not found and the Clerk argues they do not exist.

## **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 Marion County Clerk is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, 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. Ind. Code § 5-14-3-3(a). A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received. Ind. Code § 5-14-3-9(c).

The prison mail system can be finicky and I generally do not fault public agencies for a delay in response when they have not received the correspondence in a timely manner. Indeed, this sometimes puts inmates at a disadvantage, but only as a matter of slight delay. As for the records themselves, they appear to not exist. This could be due to telephone communication as opposed to a written request. It appears as if the requests sought were not documented.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that the Marion County Clerk's Office has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor