



# STATE OF INDIANA

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July 3, 2008

Dexter Berry  
DOC #114153  
PO Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 08-FC-158; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion Circuit Court*

Dear Mr. Berry:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Marion Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. The Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk did not violate the APRA by not responding to a request she did not receive.

## BACKGROUND

You allege that you submitted a request to the Clerk for access to court records. You allege that the Clerk failed to respond to the request. Further, you contend that you cannot pay for copies of records.

The Clerk responded to the complaint by letter dated June 19, 2008 from Chief of Staff Teresa Hall. The Clerk contends the office maintains no record of having received your request. Further, the Clerk contends that because the office cannot find a record of the pending civil matter to which you refer, the \$1.00 per page copy fee cannot be waived.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Clerk is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Clerk asserts the office has no record of having received your request. If the Clerk did receive your request, she would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Clerk did not receive your request, she did not violate the APRA by not responding.

Regarding your contention that you cannot pay for copies, the APRA contains no provision entitling you to copies of public records at no charge. In some instances the General Assembly may have provided fee waivers for copies of certain public records. Further, there are instances when a court will issue an order of indigence ordering an incarcerated person to receive copies of certain public records at no charge. In the case of your request to the Clerk, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk did not violate the APRA by not responding to a request she did not receive.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Teresa Hall, Chief of Staff, Clerk of the Marion Circuit Court