



# STATE OF INDIANA

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August 12, 2008

Larry Porter  
DOC #873198  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 08-FC-187; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion Circuit Court*

Dear Mr. Porter:

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 on July 8, 2008 you submitted a request to the Clerk for access to an arrest warrant and probable cause affidavit. You allege that the Clerk failed to respond to the request.

The Clerk responded to the complaint by letter dated August 12, 2008 from Chief of Staff Teresa Hall. The Clerk contends that after reviewing the complaint and searching for correspondence, the Clerk has learned that the request was received by a court staff member and not a member of the Clerk's staff. The court staff member filed the request as correspondence to the judge. The Clerk's office did not receive the request. After receiving the complaint, the Clerk has located records responsive to your request and will send those to you.

## 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(m). 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, the agency 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.

Although your request was sent to the court and not directly to the Clerk, the Clerk's office has now collected any records responsive to your request and is sending those records to you.

#### 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