



STATE OF INDIANA

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June 5, 2009

David Michael Jones
DOC #850168
Box 473
Westville, Indiana 46391

Re: Formal Complaint 09-FC-130; Alleged Violation of the Access to Public Records Act by the Clerk of the Madison Circuit Court

Dear Mr. Jones:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Madison Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for copies of 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 you have submitted to the Clerk requests for copies of a number of records. You filed the present complaint on May 21 (postmarked May 15), alleging the Clerk failed to respond to the requests.

The Clerk responded to the complaint by letter dated June 1. The Clerk contends her office maintains a log of all offender correspondence. She contends that while the office has received some correspondence from you, there is no record of your requests. Further, the Clerk contends her office does not conduct criminal background checks and indicates that law enforcement agencies provide those records. The Clerk provides further information regarding your request.

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 she did not receive 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, her office did not violate the APRA by not responding.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Ludy Watkins, Clerk of the Madison Circuit Court