



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

August 21, 2009

Michael Christianson  
DOC #135489  
727 Moon Road  
Plainfield, Indiana 46168

*Re: Formal Complaint 09-FC-189; Alleged Violation of the Access to Public Records Act by the Marion County Clerk's Office*

Dear Mr. Christianson:

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk did not violate the APRA.

## BACKGROUND

You allege that on July 17, 2009 you mailed to the Clerk a request for copies of a number of records. You allege the Clerk did not respond to your request. Your complaint was postmarked on August 17, and my office received it on August 19.

The Clerk responded to the complaint by electronic mail message dated August 21 from Scott Hohl, Chief of Staff for the Clerk. The Clerk contends the office has not received a request from you. Mr. Hohl indicates the Clerk will respond to you based on the request included with the complaint.

## 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 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).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, the Clerk did not receive your request. If the Clerk had received the request, the office would have been required to issue a response to you within seven days of receipt. I.C. § 5-14-3-9(b). An agency cannot, though, respond to a request it has not received. As such, the Clerk has not violated the APRA by not responding to a request the office did not receive.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Scott Hohl, Marion County Clerk's Office