



STATE OF INDIANA

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October 8, 2008

Marcus Snell
DOC #158292
4490 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 08-FC-214; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion Circuit Court

Dear Mr. Snell:

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.

BACKGROUND

You filed a complaint on October 6, 2008, alleging that on September 2 you submitted a request to the Clerk for copies of a number of transcripts related to the same cause number. You allege that the Clerk failed to respond to the request.

The Clerk responded to the complaint by letter dated October 7 from Chief of Staff Teresa Hall. The Clerk contends that the office did not receive the request. Further, the Clerk contends that the office likely should not have received the request since the records you requested are not maintained by the Clerk's office. Since the records are not maintained by the Clerk, the Clerk could not fulfill your request even if the office did receive the request. The Clerk indicates the request should have gone to the Court.

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 for access to records maintained by the agency, 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.

Further, your request to the Clerk's office for copies of transcripts was a request sent to the incorrect agency. Your request should be made directly the Court.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

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