



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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September 9, 2015

Tyrone Frazier
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 15-FC-242 (Priority); Alleged Violation of the Access to Public Records Act by the Marion County Clerk Office

Dear Mr. Fraizer,

This advisory opinion is in response to your formal complaint alleging the Marion County Clerk Office (“Office”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* As of the writing of this opinion, the Office has not responded to your complaint, despite an invitation to do so on August 31, 2015. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 31, 2015.

BACKGROUND

Your complaint dated August 25 alleges that the Marion County Clerk Office violated the APRA by denying you access to public records. On August 13, you sent a request to the Office requesting a certified copy of your case summary for the purposes of ascertaining your upcoming hearing date. As of the filing of your complaint, you had not received a response.

ANALYSIS

The public policy of the APRA states that “(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.” See Ind. Code § 5-14-3-1. The Marion County Clerk Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).



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A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Without a benefit of a response from the Clerk's Office, I cannot make a definitive determination as to why you have not received a response. However, based on a brief conversation I had with an official, it is uncertain whether your request arrived at the Office. If a request was not received, there is no violation, however, if it was received, the deadline for acknowledgement has elapsed.

Second, I will note a deficiency in your request. In your request, you included an Affidavit of Indigency. Under Ind. Code § 33-37-5-1(b) a clerk may charge up to \$1.00 per page for records. Further, The Access to Public Records Act **does not** have a provision for indigence. Therefore, the Office **can** request copy fees before providing records to you. Previous public access counselors have ruled likewise. Therefore, if you wish to receive your records, you will have to provide payment to the Office.

Because I cannot determine whether your request was received by the Clerk's Office, I decline to find a violation. However, the Office should be on notice as to your request and it is my sincere hope that you receive the records you are seeking.

Regards,

A handwritten signature in black ink, appearing to read "L. Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Myla A. Eldridge