

August 28, 2003

Mr. Keith Ware, 5265
Location C-206
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: 03-FC-66; *Alleged Denial of Access to Public Records by the Lake County Court*

Mr Mr. Ware:

This is in response to your formal complaint, which was received on July 30, 2003. You have alleged that the Lake County Court ("Court") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Court denied you access to public records in response to your July 11, 2003 request for a copy of transcripts of preliminary hearings held under cause no ICR-17-175-75 specifically:

1. Transcripts of hearing held on 1-24-75
2. Transcripts of hearing held on 1-29-75

Mr. Bonnie Jones, Court Attache for the Court, responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Court did not deny you access to public records under the APRA since there is no obligation to produce public records that do not exist.

BACKGROUND

According to your complaint, on July 14, 2003 you submitted a public records request to the Court. When you did not receive a response to your request you filed your complaint with this Office. In response to your complaint, Ms. Jones attached two orders from the court one indicates that "the court will not *order them prepared* at court expense." (Emphasis added.)

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.” Ind. Code § 5-14-3-1. Furthermore, “[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” Ind. Code § 5-14-3-1.

The Court is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). It appears based upon the order from Judge Salvador Vasquez the transcripts you requested have not been prepared. It is my opinion that the APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.

CONCLUSION

It is my opinion that the Court did not deny you access to public records in violation of the Access to Public Records Act with respect to your July 11, 2003 request. It is not a denial of access under the APRA not to produce public records that do not exist.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Cc: Ms. Bonnie Jones, Lake County Court