

June 17, 2004

Mr. Marc Stults, No. 891999  
Wabash Valley Correctional Facility  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: 04-FC-86; Alleged Violation of the Access to Public Records Act by the  
Clerk of the Madison County Circuit Court*

Dear Mr. Stults:

This is in response to your formal complaint alleging that the Clerk of the Madison County Circuit Court (Clerk) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when that office failed to produce records in response to your request. The Court Reporter responded to your request for public records, and stated that no records were responsive to your request. For the reasons set forth below, I find that the Clerk did not violate the APRA.

#### BACKGROUND

On April 19, 2004, you made a written request for public records to the Clerk of the Court. Your request sought copies of all transcripts of hearings held in a criminal matter involving you and designated Cause No. 48C01-9808-CF-208. Specifically, you sought transcripts from hearings held on October 15, 1998, and October 16, 1998. The Court Reporter in the relevant matter responded in writing stating that there were no hearings held in that matter on those dates, and thus no records were responsive to your request. The Court Reporter indicated that the only action occurring in your case on those dates were court filings. This complaint followed.<sup>1</sup>

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<sup>1</sup> Indiana Code 5-14-5-8 requires that I immediately forward a copy of any properly filed formal complaint to the public agency that is subject to the complaint. I do so with this opinion. Normally, the complaint is forwarded to the public agency before an opinion is composed in order that the agency be afforded an opportunity to respond and to facilitate resolution of the complaint. While the Clerk may certainly prepare and file a response to the complaint, a response is unnecessary to resolution based on a plain reading of the statutes at issue and the facts asserted in the complaint.

## ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the APRA. IC 5-14-3-3(a). A “public record” means any writing, paper, report, study, map, photograph, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2. A public agency is not required to create a record in response to a request, and it is not required to produce a record it does not have. If an agency does not have a responsive record, it should say so, but its failure to produce a record it does not have and is not required to have is not a denial under the APRA.

The Court Reporter’s written response to your record request indicates that there are no records responsive to your request inasmuch as no hearings were held on the dates in question. Your complaint and supporting documents do not establish otherwise. If you have evidence to support your claim that documents are being withheld, you are, of course, free to pursue your civil remedies under the statute. *See* IC 5-14-3-9, 9(i). Based on the evidence before me, I decline to find a violation of the APRA.

## CONCLUSION

For the reasons set forth above, I find that the Clerk did not violate the APRA.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Ms. Kathy Stoops-Wright