

March 13, 2008

Howard Street
DOC #935516
Indiana State Prison
PO Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 08-FC-59; Alleged Violation of the Access to Public Records Act by the Clerk of the Vigo Circuit Court

Dear Mr. Street:

This advisory opinion is in response to a formal complaint filed by you alleging the Clerk of the Vigo Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Clerk's response to your complaint is enclosed for your reference. It is my opinion the Clerk did not violate the APRA.

BACKGROUND

You allege you requested from the Clerk a copy of all petitions, motions and pleadings related to post conviction relief related to a certain cause number. You allege the Clerk denied you access to those records.

The Clerk provides copies of court records related to your request. The Vigo Superior Court, Division 3 considered your request and denied it because there has been no petition for post-conviction relief filed. As such, no records responsive to your request exist.

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's office is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk's office

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, the agency must respond to the request within seven days of receipt. I.C. § 5-14-3-9(b).

Here, you have requested records which the Clerk contends do not exist. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

While a public agency must provide access to public records unless an exception to disclosure applies (*See* I.C. § 5-14-3-3), an agency cannot provide access to record that does not exist.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk of the Vigo Circuit Court did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Patricia Mansard, Clerk of the Vigo Circuit Court