



STATE OF INDIANA

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Mr. Craig Brown
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Lafayette, IN 47909
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Re: Consolidated Formal Complaints 10-FC-126, 10-FC-127, 10-FC-128, 10-FC-129; Alleged Violations of the Access to Public Records Act

Dear Mr. Brown:

This advisory opinion is in response to your formal complaint alleging attorney Linda Kampe Houtz, Lieutenant Governor Rebecca Skillman, the Tippecanoe County Recorder (the "Recorder"), and the Tippecanoe County Clerk of Courts (the "Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The responses from these entities are enclosed for your reference.

BACKGROUND

In your complaints, you allege that the above-referenced entities violated the APRA by failing to provide you with certain court records. In response to your complaint, the entities have each responded by stating that they do not maintain the records you requested. Moreover, with respect to Ms. Houtz, she is not a "public agency" under the APRA.

ANALYSIS

With respect to Ms. Houtz, I note that the APRA applies to public *agencies* rather than public *officials*. See I.C. § 5-14-3-2. Because Ms. Houtz does not fall within the definition of a public agency under the APRA, your complaint against her is without merit.

With regard to the remaining agencies, if they do not maintain the records that you seek, they have not violated the APRA by failing to provide you with a copy. The

public access counselor has repeatedly said that if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he 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.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

In response to your complaint against the Clerk, attorney David W. Luhman, who responded on behalf of the Clerk, notes that all electronic audio files of court proceedings of the type you requested are maintained by Tippecanoe Superior Court 2 in accordance with Ind. Trial Rule 74. If you are still interested in obtaining the relevant records, I suggest you contact the court directly. If the court maintains responsive records, I trust it will respond to your request in accordance with the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that none of the above-referenced entities violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: David W. Luhman
S. Kyleen Nash
Judge Thomas H. Bush