



# STATE OF INDIANA

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June 18, 2010

Mr. Richard K. Corbin  
DOC # 975153  
4490 W. Reformatory Road  
Pendleton, IN 46064

*Re: Formal Complaint 10-FC-135; Alleged Violation of the Access to Public Records Act by the Public Defender of Indiana*

Dear Mr. Corbin:

This advisory opinion is in response to your formal complaint alleging the Public Defender of Indiana (the "PD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The PD's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you requested a copy of two appellate court decisions from the PD. The PD denied your request, stating that it did not believe it was obligated to obtain the decisions and provide them to you free of charge. The decisions you sought were not a part of your case file and were not maintained by the PD.

In response to your complaint Deputy Public Defender John T. Ribble maintains the PD's position that it is not obligated to procure and send the decisions to you at no cost. Mr. Ribble states that you are no longer a client of the PD and, as such, if he were to provide you with what he describes as "free legal research," he would also be required to provide such free services and materials to anyone else who requested it under the APRA.

## ANALYSIS

In my opinion, the PD did not violate the APRA by refusing to provide you with a record that the PD does not maintain. 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.” *See, e.g., 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....”).

Moreover, the public access counselor has repeatedly opined that public agencies are under no obligation to create new records in response to a public records request. *Opinion of the Public Access Counselor 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”). Consequently, the PD did not violate the APRA by failing to create a copy of the records in order to fulfill your request.

Finally, even if the PD did have the records you requested and was willing to provide them to you, the PD would not have to give you the copies for free. The APRA permits a public agency to charge a fee for copies of public records. I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copying fee in advance. IC 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124.*

#### CONCLUSION

For the foregoing reasons, it is my opinion that the PD did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: John T. Ribble