



STATE OF INDIANA

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November 17, 2010

Mr. Philip Gregory Yeary
DOC# 169399
1946 W. U.S. 40
Greencastle, IN 46135

Re: Formal Complaint 10-FC-247; Alleged Violation of the Access to Public Records Act by Division of State Court Administration

Dear Mr. Yeary:

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

BACKGROUND

In your complaint, you allege that on August 8, 2010, you submitted a written request for public records to the Division. After receiving no response, you submitted a second request on September 13th. As of October 11th, you had not received a response from the Division. Your request sought records concerning a "former deputy prosecuting attorney from the 7th Judicial Circuit," whom you state was employed in Dearborn and Ohio Counties from 1997 - 2009.

In response to your complaint, the Division states that it maintains no records regarding the individual mentioned in your request. In a letter to you, the Division suggested that you contact the auditor's office in the county in which the individual worked.

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." I.C. § 5-14-3-1. The Division is 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 Division's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Division maintains that it possesses no records responsive to your request. 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..."). Consequently, it is my opinion that the Division did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Division has no records responsive to your request, the Division did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: David J. Remondini