



STATE OF INDIANA

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December 22, 2010

Mr. Aaron Isby
DOC # 892219
Wabash Valley Correctional Facility
6908 S. Old U.S. Hwy. 41
Carlisle, IN 47838

Re: Formal Complaint 10-FC-292; Alleged Violation of the Access to Public Records Act by the Madison County Circuit Court

Dear Mr. Isby:

This advisory opinion is in response to your formal complaint alleging the Madison County Circuit Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Madison County Clerk Ludy Watkins responded on behalf of the Court. Her response is enclosed for your review.

BACKGROUND

In your complaint, you allege that on October 28, 2010, you submitted a public records request to the Court seeking information regarding the election campaign of Judge Fredrick R. Spencer. You claim that the Court denied your request on November 17th without providing a statutory basis for its denial. In reviewing the Court's denial attached to your complaint, it appears the Court did not produce the records because it does not maintain them.

In response, Clerk Watkins states that the Court does not maintain the records you seek. She states that upon receipt of the applicable \$0.10 per page copy fees, all responsive records will be provided to you. Additionally, you or your representative are welcome to visit the Clerk's office and review responsive records during regular business hours.

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 Court 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 Court’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).

You initially requested the election records from the Court, which does not maintain such records. 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....”). Thus, the Court did not violate the APRA by failing to release records that it does not have.

The Clerk is the custodian of the records that you seek, and she states that all responsive records will be available to you upon receipt of the applicable copy fees. I trust this satisfies your complaint.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Hon. Ludy Watkins