



STATE OF INDIANA

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August 1, 2011

Mr. Kashmir L. Bray
DOC # 161617
6908 S. Old Highway 41
Carlisle, Indiana 47838

Re: Formal Complaint 11-FC-168; Alleged Violation of the Access to Public Records Act by the Lake County Clerk's Office, Superior Court Division 1.

Dear Mr. Bray:

This advisory opinion is in response to your formal complaint alleging the Lake County Clerk's Office, Superior Court Division 1 ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sylvia Brown, Division Manager for the Office of the Lake Superior Court Clerk (Criminal Division), responded on behalf of the Clerk. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that your written request was denied for "court reporter records of court hearing Case No. 45-G04-0509-FA-00048 that occurred on September 27, 2005, October 11, 2005, November 15, 2005, December 13, 2005, January 10, 2005, January 24, 2006, January 26, 2006, January 30, 2006, February 28, 2006, April 4, 2006, and May 8, 2006." The Clerk provided in their response to your request that the court file does not contain the information you were requesting.

In response to your formal complaint, Sylvia Brown advised that the "court's file did not contain the information he requested."

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 Clerk 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 Clerk'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).

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 in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Clerk responded to your request within the seven-day period that APRA prescribed for responding to written requests.

Generally, 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.” *Op. of the Public Access Counselor 01-FC-61*. APRA does not require public agencies to create records to satisfy a request. *Op. of the Public Access Counselor 10-FC-56*; 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....”). Since the Clerk has no such record responsive to your request, they did not violate the APRA.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Sylvia Brown, Office of the Lake Superior Court Clerk