



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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October 20, 2011

Gregory P. Yeary  
DOC # 169399  
1946 W. U.S. Highway 40  
Greencastle, Indiana 46135

*Re: Formal Complaint 11-FC-253; Alleged Violation of the Access to Public Records Act by the Switzerland Circuit Court Clerk's Office*

Dear Mr. Yeary:

This advisory opinion is in response to your formal complaint alleging the Switzerland County Circuit Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Kimberly A. Hambrick, Switzerland County Clerk, provided a response to your formal complaint. Her response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on August 15, 2011 you filed a Notice of Appeal under Cause No. 78-C01-0902-FB-613, which required the Clerk to assemble, issue, file, and serve by September 14, 2011. You provide that the Clerk has failed to timely comply with Indiana Appellate Rule 10.

In response to your formal complaint, Ms. Hambrick provided that she complied with the requirements of Indiana Appellate Rule 10 in responding to your request. Ms. Hambrick provided a copy of an Order issued by the Court of Appeals, which denied your Motion to Compel completion of the Clerk's Record and your Motion to Compel the Clerk to provide you with a copy of the trial court's transcripts.

## 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." *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* 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. *See* I.C. § 5-14-3-3(a).

The APRA provides the right to inspect and copy records of a public agency. However, it is separate and distinct from other court proceedings, both civil and criminal. The Clerk contends that you did not make a records request pursuant to the APRA but instead requested that it comply with the Indiana Appellate Rules, which the Clerk has provided it has done so. You specifically alleged in your formal complaint that the Clerk failed to timely comply with Indiana Appellate Rule 10. While the APRA does not require a requester to specifically invoke the APRA, it is my opinion that after reviewing your request made of the Clerk that it was reasonable for it to interpret it as being made pursuant to Indiana Rules of Appellate Procedure. As such, your request was made through means outside the scope of the APRA and it is my opinion that the Clerk did not violate the APRA in responding to it pursuant to the Indiana Rules of Appellate Procedure. *See Opinions of the Public Access Counselor 07-FC-314; 08-FC-234; 11-FC-236.*

#### 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". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Kimberly A. Hambrick