



STATE OF INDIANA

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December 8, 2011

Kashmir L. Bray
6908 South Old Highway 41
Carlisle, Indiana 47838

Re: Formal Complaint 11-FC-297; Alleged Violation of the Access to Public Records Act by the Lake County Superior Court

Dear Mr. Bray:

This advisory opinion is in response to your formal complaint alleging the Lake County Superior Court violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Magistrate Kathleen A. Sullivan responded to your request. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on November 21, 2011 you made a request of the Court, via the Court's Reporter, for pre-trial records related to Cause No. 45-G04-0509-FA-00048, including "hearing DVD's and other discovery transcripts." The Court responded to your request and advised that it interpreted your correspondence as a request for preparation of a transcript for certain proceedings, which is not contemplated by the APRA.

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 Court 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 Court'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).

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.” *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 APRA does not require a public agency to create a new record in order to satisfy a public records request. See *Opinion of the Public Access Counselor 10-FC-56*. Here, the Court interpreted your correspondence as a request for the preparation of a transcript for hearings held under Cause No. 45-G01-0710-FA-00037. If the Court had not prepared, prior to your request, transcripts of the hearings requested, it was not required to create a transcript in response to a request made pursuant to the APRA. It is possible that there are other avenues, outside the APRA, that you may request the production of transcripts for said hearings. However as to your formal complaint filed with the Public Access Counselor’s Office, it is my opinion that the Court did not violate the APRA in responding to your request.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage'.

Joseph B. Hoage
Public Access Counselor

cc: Magistrate Kathleen A. Sullivan