



STATE OF INDIANA

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May 24, 2012

Randall S. Tison
DOC 127788
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-119; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Clerk's Office

Dear Mr. Tison:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Susan K. Kirk, Vanderburgh County Clerk, responded to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

On April 26, 2012, you submitted a request to the Clerk pursuant to the APRA for various records related to Cause No. 82-D02-0110-CF-791 and Case No. 01-33-624. You allege that the Clerk and/or the Vanderburgh County Court ("Court") improperly denied your request.

Ms. Kirk advised in response to your formal complaint provided that the Clerk does not maintain any records that were responsive to your request. The Court had addressed a similar request from you in a May 1, 2012 order.

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).

A request for records may be oral or written. *See* 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 twenty-four hours, the request is deemed denied. *See* 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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. As to your allegation that the Court failed to provide the name and title of the person who denied your request, it is my opinion that it is evident from the CCS that you provided that Judge Mary Margaret Lloyd, denied your request on behalf of the Court. As such, it is my opinion that the Court did not violate section 9 of the APRA in denying your request.

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 Clerk has provided that it does not maintain any records that are responsive to your request. As such, it is my opinion that the Clerk did not violate the APRA in responding to your request for records.

From the records that you have provided with your formal complaint, it would appear that you made a similar request of the Court on May 1, 2012. The Court found that the request lacked reasonable particularity, certain parts of the record that were sought were confidential, and you were provided a copy of the record that was sought on May 13, 2013. The APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law,



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a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party's request. *Opinion of the Public Access Counselor 04-FC-38.*

To the extent that your request lacked reasonable particularity, the Court would not have violated the APRA by seeking further clarification for your request due to it being vague in nature.

Under section 4 of the APRA, a public agency may not disclose records declared confidential by or under rules adopted by the supreme court of Indiana. I.C. § 5-14-3-4(a)(8). Confidentiality of court records is governed chiefly by Administrative Rule 9, which was adopted by the Indiana Supreme Court. The rule applies to court records, which is defined as both case records and administrative records. Admin. R. 9(C)(1). "Case record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case. Admin. R. 9(C)(2). All persons have access to court records as provided in Administrative Rule 9. Admin. R. 9(B)(1). However, some case records are confidential, pursuant to Administrative Rule 9(G). To the extent the records you sought were declared confidential pursuant to (a)(8) and Administrative Rule 9, the Court would not have violated the APRA in denying your request.

The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. See I.C. § 5-14-3-8(e). Accordingly, it is my opinion that the Court would not have violated the APRA in denying your request if it has already provided you with a copy of the record on a previous occasion. A Court, in denying a request for the audio recording of a trial, would not violate the APRA if the requestor had previously been provided with a written transcript of the proceeding. See *Opinion of the Public Access Counselor 07-FC-185 and 12-FC-45.*

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Susan K. Kirk