



STATE OF INDIANA

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March 1, 2012

William Holly
DOC 946922
P.O. Box 1111, A-107
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-49; Alleged Violation of the Access to Public Records Act by the Miami County Clerk's Office

Dear Mr. Holly:

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

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Clerk on February 14, 2012 for all transcripts and legal documents relating to Cause No. 52-C01-1106-MI-240 so that you may complete the appellate process. As of February 23, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Clerk has failed to respond to your request.

In response to your formal complaint, Ms. Leffel advised that the Clerk received your request for a copy of the transcript in your referenced cause number. To date, the Clerk has not received the transcript from the court reporter. The Miami County Circuit Court ("Court") did issue an Order on September 16, 2011 to the court reporter to prepare and certify a transcript of all hearings that had been conducted. The Clerk believes that the court reporter will be filing an extension of time to prepare the transcript. The Clerk provided copies of the Chronological Case Summary ("CCS"), which provide that on September 16, 2011 the Court received your Notice of Appeal. The Court in turn ordered the court reporter to prepare a transcript of all hearings and the Clerk to assemble the Court's record and to provide notice to all parties.

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 Department’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. You submitted a request for a transcript for all hearing under Cause Numbers 52-C01-1106-MI-240. After reviewing the CCS submitted by the Clerk, it is my opinion that you are not making a public records request pursuant to the APRA but are requesting that the Clerk and/or court reporter comply with the Court’s September 16, 2011 Order. Pursuant to the APRA, the Clerk and/or court reporter would not be required to prepare a transcript for you; as the transcript is a new record and an agency is not required to create a new record in response to a request. *See Opinion of the Public Access Counselor 06-FC-08*. As such, your request was made through means outside the scope of the APRA. *See Opinions of the Public Access Counselor 07-FC-314 and 08-FC-324*. Your appropriate action would be to file a motion with the Court under the above referenced cause number; inquiring as to the status of its September 16, 2011 Order and the preparation of any transcripts involved with your appeal.

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 "Joe Hoage". The signature is stylized with a large initial "J" and "H".

Joseph B. Hoage
Public Access Counselor

cc: Tawna L. Leffel