



STATE OF INDIANA

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May 24, 2013

Mr. Michael R. Becker
DOC 188325
P.O. Box A
New Castle, Indiana 47362

Re: Formal Complaint 13-FC-143; Alleged Violation of the Access to Public Records Act by the St. Joseph County Clerk of Courts

Dear Mr. Becker:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Clerk of Courts ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Judge Jerome Frese responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide on April 13, 2013, you submitted a written request for records to the Clerk. As of May 14, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Clerk.

In response to your formal complaint, Judge Frese advised that you had requested transcripts from your guilty plea hearing, copies of "both" Pre-Sentence Investigation Reports ("Report"), and the most recent Chronological Case Summary ("CCS") from your criminal case. Prior to the receipt of your request, no written transcript had been created for your guilty plea hearing. Judge Frese has ordered that a transcript be created and provided to you. As to your request for the Report, Judge Frese is unaware of two different Reports. You have previously been provided with a copy of the Report by your attorney, via a similar request that was submitted to the Clerk in 2010. As to your request for the CCS, Judge Frese ordered the Clerk to provide you with the most recent copy on May 13, 2013.

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 orally, the request is deemed denied if the agency fails to respond within twenty-four hours of its receipt. *See* I.C. § 5-14-3-9(a)(2). 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. *See* 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. If the Clerk did not respond to your written request within seven days of receipt, it acted contrary to the requirements of section 9 of the APRA.

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*. Pursuant to the APRA, if a written transcript has not been prepared prior to the receipt of a request, the agency would not be required to create a written transcript. *See Opinions of the Public Access Counselor 06-FC-08; 11-FC-297; 12-FC-49*. As to your request for a copy of the transcript from your guilty plea hearing, Judge Frese advised that prior to the receipt of your request, a written transcript had never been created. However, Judge Frese ordered the transcript to be created at public expense, but noted that the court reporter’s first duty would be to the creation of those transcripts that have a deadline imposed and other previously-filed requests. As the Clerk is going above and beyond the requirements of the APRA in creating a record to satisfy a request, it is my opinion that the Clerk has not violated the APRA.

Judge Frese has provided that you have previously been provided with a copy of the only Report maintained by Clerk. 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). As such, if the Clerk previously provided a copy of the Report, it would not be required to provide additional copies. As to your request for a copy of the most recent CCS, Judge Frese ordered a copy of the record be provided to you on May 13, 2013.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Clerk failed to respond to your written request for records within seven (7) days of its receipt, it acted contrary to section 9 of the APRA. As to all of issues, 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: Judge Jerome Frese