



# STATE OF INDIANA

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July 18, 2013

Mr. Thaddeus L. Rodriguez  
DOC 964882  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 13-FC-184; Alleged Violation of the Access to Public Records Act by the Porter County Superior Court*

Dear Mr. Rodriguez:

This advisory opinion is in response to your formal complaint alleging the Porter County Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Judge Mary R. Harper responded in writing to your formal complaint. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you provide that you submitted a written request for records to the Court on May 29, 2013. As of June 27, 2013, the date you filed your formal complaint with the Public Access Counselor, you further allege that you have yet to receive any response from the Court. You requested all video and voice recordings of all hearings held during your criminal prosecution from January 29, 2008 to March 17, 2009.

In response to your formal complaint, Judge Harper advised that your original request for records was directed to the "Clerk of the Court #5", which is a separate and distinct entity administered by the duly elected Clerk of Courts. Regardless, your request was not reasonably particular as you failed to provide a cause number for the records sought, as you have had multiple criminal cases before the Court. As submitted, the request would have required the Court to guess what records were responsive to your request. If a request is submitted directly to the Court, the Court requires the requestor identify what case or cases the request pertains to and the dates of the requested hearings. While the request was not directed to the Court, Judge Harper noted that you have previously received full copies of your trial transcripts at public expense. The Court does not maintain video recordings of its proceedings.

## 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).

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 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. As applicable here, your initial request for records was directed to the Clerk. Thereafter, you filed a formal complaint against the Court itself. As noted by Judge Harper, the Clerk and Court are separate agencies. Thus, as a request had never been previously submitted to the Court, it is my opinion that it cannot have violated the APRA.

Even if the Court had received your request, it is my opinion that the request, as submitted, was not reasonably particular. The APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). “When a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *See Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88*. The Court noted that you have multiple criminal cases during the time period requested. The Court has advised that if you intend to submit a request for records to the Court, you would need to specify the cause number and the date of the requested hearings.

“[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*. Under the APRA, the Court would not be required to create a written transcript in order to satisfy a request for records. If the Court does not maintain an audio and/or video recording of the hearings sought, the APRA would not require the Court to produce or create a record in response. *See Opinions of the Public Access Counselor 06-FC-08 and 12-FC-49*. The APRA requires a public agency to provide one copy of a discloseable 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). If you have previously received a written transcript for the hearing requested, the Court would not be in violation of the APRA by failing to provide you with an audio copy. See *Opinions of the Public Access Counselor 07-FC-185 and 12-FC-45*.

#### CONCLUSION

Based on the foregoing reasons, it is my opinion that the Court did not violate the APRA in response to your request.

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 long, sweeping underline.

Joseph B. Hoage  
Public Access Counselor

cc: Judge Mary R. Harper