



STATE OF INDIANA

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August 5, 2013

Mr. Zachary K. Gootee
DOC 925692
3038 W. 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 13-FC-222; Alleged Violation of the Access to Public Records Act by the Putnam County Clerk

Dear Mr. Gootee:

This advisory opinion is in response to your formal complaint alleging the Putnam County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Marty G. Watts, Putnam County Clerk, responded in writing to your formal complaint. A copy of the response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you submitted a written request for records to the Clerk for a copy of your public defender client file for Cause No. 67-C01-0705-FC-00053 and 67-C01-0701-FC-0002 and minutes from a hearing held by the Court under Cause No. 67-C01-0701-FC-00002.

In response to your formal complaint, the Clerk advised that on July 17, 2013, the Chronological Case Summary ("CCS") from Cause No. 67-C01-0701-FC-002 provides that the Court received your request for a copy of a specific transcript. On July 25, 2013, the Court mailed you a copy of the proceeding. As to your request for copies of your public defender file, the Clerk does not maintain any records responsive to your request and has forwarded your request, filed in your Petition for Post-Conviction Relief, to the Special Judge assigned to the matter in order to issue a response.

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 24 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 (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 include information regarding how or when the agency intends to comply. As applicable here, a copy of the transcript requested from Cause No. 67-C01-0701-FC-00002 was provided, via regular mail, on July 25, 2013. As such, it is my opinion the Clerk complied with the APRA in response to your request for the hearing transcript.

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...."). Further, an agency is not required to create a record in response to a request. Here, the Clerk has provided that it did not have any records responsive to your request for your public defender file under Cause No. 67-C01-0705-FC-00053 and 67-C01-0701-FC-0002. Accordingly, it is my opinion that the Clerk did not violate the APRA by failing to produce a record never maintained by the agency. I would also note that issues regarding your Petition for Post-Conviction Relief are outside the purview of the Public Access Counselor and would need to be addressed by the respective Putnam County Circuit Court.

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

Joseph B. Hoage
Public Access Counselor

cc: Marty G. Watts