



STATE OF INDIANA

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August 23, 2013

Mr. Orza Salone
DOC 944875
P.O. Box 41
Michigan City, Indiana 46361

Re: Formal Complaint 13-FC-248; Alleged Violation of the Access to Public Records Act by the Howard County Clerk

Dear Mr. Salone:

This advisory opinion is in response to your formal complaint alleging the Howard County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Kim Wilson, Howard County Clerk, 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 Clerk on or about August 6, 2013. As of August 23, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that the Clerk has failed to respond to your request in any fashion.

In response to your formal complaint, Ms. Wilson advised that the Howard County Court ("Court") received your request on or about August 8, 2013, to which the Court responded, in writing, on August 9, 2013. The Court advised that it did not maintain any records responsive to your request and that all orders, pleadings, and transcripts associated with each criminal cause have already been provided to you. Copies of the relevant Chronological Case Summaries are enclosed for your reference.

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 and Court are public agencies 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 or 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 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, the Court received your request on August 8, 2013, to which it responded in writing on August 9, 2013. As such, it is my opinion that the Court complied with section 9(b) of the APRA in responding to your written request for records.

“[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, a public agency is not required to create a record in response to a request made under the APRA. The Clerk and Court has provided that it does not maintain any records responsive to your request. As such, it is my opinion that neither the Clerk nor Court violated the APRA by failing to provide a record that does not exist.

Lastly, the Clerk has provided that you have previously been provided with copies of all orders, pleadings, and transcripts associated with your criminal proceedings. Pursuant to section 8(e) of the APRA, if a person is entitled to receive a public record, the public agency must provide at least one copy. *See* I.C. § 5-14-3-8(e). The Court or Clerk would not violate the APRA by refusing to provide multiple copies of an identical record.

CONCLUSION

Based on the foregoing reasons, it is my opinion that neither the Clerk nor the Court violated the APRA in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Kim J. Wilson