



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

March 12, 2013

Mr. Khalid M. Jackson-Bey
DOC 195545
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 13-FC-85; Alleged Violation of the Access to Public Records Act by the Clerk of the Lake County Court

Dear Mr. Jackson-Bey:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Lake County Court Circuit and Superior Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sylvia Brown, Division Manager, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Clerk for copies on certain trial transcripts related to your criminal proceeding. The Clerk responded in writing to your request and provided that it does not maintain copies of the transcripts in its file.

In response to your formal complaint, Ms. Brown advised that the Clerk does not maintain any records that are responsive to your request. The Clerk further provided a copy of the Court's order from February 6, 2011 where the Court denied your prior request for copies of transcripts.

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 twenty-four 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 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. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

“[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...”). Here, the Clerk has provided that it does not maintain any transcripts in its files for your case. As such, it is my opinion that the Clerk did not violate the APRA by failing to produce a record that it did not maintain. I would encourage you to resubmit your public records request directly to the Lake County Court who presided over the trial. The Court, via the court reporter or other Court personnel, would be required to respond to your request. I would also encourage you to clearly provide that you are making a request pursuant to the APRA and not pursuant to a separate civil or criminal proceeding. While the Court would not be required to create a transcript in response to a request, if the Court has previously created such a record, it would be required to either provide the record or deny the request pursuant to the requirements of section 9(c) of the APRA. Pursuant to section 8 of the APRA, the Court may charge a fee for copies of records provided and require the fee be paid in advance.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA in response to your request.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Sylvia Brown