



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 22, 2009

Mr. Ronrico J. Hatch
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 09-FC-214; Alleged Violation of the Access to Public Records Act by the Allen Superior Court

Dear Mr. Hatch:

This advisory opinion is in response to your formal complaint alleging the Allen Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. I suspect that this issue stems from a simple case of miscommunication between you and the Court. If, however, the Court is correct that the records you sought do not exist, my opinion is that the Court did not violate the APRA by denying your request.

According to your complaint, you requested access to a transcript of a hearing held on February 17, 2004. It is unclear when you initially made that request. However, the Court sent documentation showing that you made a request for that transcript on April 23, 2009. In that request, you sought transcripts from February 17, 2009 [sic] and February 23, 2009 [sic]. On May 1, 2009, Court Reporter Debra K. King responded to your request via a letter in which she stated that the last time a hearing was held was March 12, 2004. Thereafter on August 28, 2009, Judge John F. Surbeck, Jr. responded to your request by letter stating that he could not accept correspondence from you due to the fact that you were represented by the Public Defender of Indiana.

After reviewing the correspondence between you and the Court as well as your complaint, I suspect that the Court was confused by your reference to a transcript from February 17, 2009, when you apparently meant to seek a transcript from a hearing held on February 17, 2004. If, however, as the Court alleges, no transcripts exists anyway, the Court did not violate the APRA by failing to produce it for you. In 2001, Counselor O'Connor opined "that the 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....")

For the foregoing reasons, it is my opinion that the Court did not violate the APRA if it failed to produce a record that does not exist.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Debra King, Allen Superior Court