



# STATE OF INDIANA

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April 1, 2011

Mr. Kenneth Houston King  
DOC # 156882  
5501 S. 1100 W.  
Westville, IN 46391

*Re: Formal Complaint 11-FC-64; Alleged Violation of the Access to Public Records Act by the Lake County Clerk<sup>1</sup>*

Dear Mr. King:

This advisory opinion is in response to your formal complaint alleging the Lake County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Clerk's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you requested a copy of several records from the Clerk's office, including a copy of a warrant issued on November 20, 2009; a copy of an order of change of bail received by the Clerk's office on November 24, 2008; and a copy of the bond set on you on December 6, 2008. You claim that the Clerk's response to that request was "not even close" to what you asked for.

In response to your complaint, Executive Chief Deputy Clerk Marilyn Hrnjak states that the Clerk's office produced the only responsive records the Clerk has: an order of change of bail received by the Clerk on November 24, 2008; and an order setting bond issued on December 6, 2008. The Clerk has no other records responsive to your request.

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<sup>1</sup> Your complaint also contains allegations regarding the Lake County Sheriff. However, your complaint form listed no official or employee of the Sheriff's office as having denied you records, and it also did not include any contact information for the Sheriff's office. Consequently, we interpreted your complaint as against the Clerk only. If you believe the Sheriff continues to deny you access in violation of the APRA, please feel free to submit an additional complaint against that office at your convenience. Please note, however, that due to the statutory time limits for filing a complaint with this office, we may only issue opinion regarding alleged denials that occurred within 30 days of the date you file such complaint. *See* I.C. § 5-14-5-7.

## ANALYSIS

The public policy of the APRA states, “[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.” I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. 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. I.C. § 5-14-3-3(a).

In response to your complaint, the Clerk states that it produced to you the only two records the Clerk maintains that is responsive to your request. In that case, the Clerk satisfied its obligations under the APRA. The Clerk cannot produce records that it does not maintain or that are not maintained by another entity on the Clerk’s behalf. 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.*

## CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Marilyn Hrnjak