



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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April 19, 2012

Eric A. Welch  
DOC 208833  
Wabash Valley Correctional Facility  
PO Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 12-FC-102; Alleged Violation of the Access to Public Records Act by the Grant County Clerk's Office*

Dear Mr. Welch:

This advisory opinion is in response to your formal complaint alleging the Grant County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* J. Mark Florence responded to your formal complaint. A copy of his response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Clerk on March 12, 2012 for all "voir dire" transcripts for Cause No. 27-C01-0902-FA-63. In a separate request made on the same date, you sought "all cause numbers for trials where "Marilyn Simons" appeared as a witness and/or expert witness." The Clerk responded to your request in writing and advised that Clerk is not able, nor required under the APRA, to search through all of its records to find any that are responsive to your request or conduct research on your behalf. Further, voir dire records are not maintained by the Clerk. Arrangements for transcripts should be coordinated with the Court Reporter.

In response to your formal complaint, Mr. Florence advised that the Clerk does not have any records responsive to your request for voir dire transcripts for Cause No. 27-C01-0902-FA-63. As to your request for "all cause numbers where Marilyn Simons appeared as a witness and/or expert witness, the Clerk's computer system does not allow it to conduct such a search. The Clerk is not required to create a records and/or list in response to a request; nor is it required to conduct research on your behalf.

## 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). 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). 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. Here, the Clerk responded to your written request for records within seven (7) days of its receipt of your original 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....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. The Clerk provided that it did not maintain any records that would be responsive to your request for voir dire transcripts and directed you to contact the Court Reporter. Further, the Clerk provided that it did not maintain a list of all cause numbers to which Marilyn Simons has been a witness and/or expert witness. As such, it is my opinion that the Clerk did not violate the APRA by failing to produce a record or list that it did not maintain in response to your request.

The APRA further provides that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). Further, the APRA does not require that a public agency search all of its records for any reference to the information being requested. *See Opinion of the Public Access Counselor 04-FC-38*. Accordingly, the Clerk did not violate the APRA by failing to search all of its records for any reference to Marilyn Chambers appearing as a witness and/or expert witness. The Clerk did advise that you or your representatives are welcome to come to



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the Clerk's offices at your convenience and search for any records that would be responsive to your request.

## 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 "Joe Hoage", written in a cursive style.

Joseph B. Hoage  
Public Access Counselor

cc: J. Mark Florence