



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

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](http://www.IN.gov/pac)

June 20, 2012

Ronald A. Tabb  
DOC 208619  
5501 South 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 12-FC-153; Alleged Violation of the Access to Public Records Act by the Clerk of the Lake County Circuit and Superior Court*

Dear Mr. Tabb:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Lake County 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 on behalf of the Clerk. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on several occasions you have submitted a written request to the Clerk for certain court records. In response to your request, the Clerk has provided that it does not maintain any records that are responsive to your request and that you should contact the correct clerk's office for the records that you seek.

In response to your formal complaint, Ms. Brown advised that the records that you have sought commence with cause number 64-D; Lake County cause numbers begin with 45. As such, the Clerk does not maintain any records that are responsive to your request.

## 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).



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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.

The Clerk has provided that it does not maintain any records that are responsive to your request. Generally, 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*; *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 has indicated that the records that you seek begin with cause number 65; whereas the cause number assigned to Lake County is 45. I would note that pursuant to Indiana Court Administrative Rule 8(B)(1), cause number 65 is assigned to Posey County. You might consider submitting a request to the Posey County Clerk’s Office or verifying that the cause number submitted to the Lake County Clerk is correct. As such, it is my opinion that the Clerk did not violate the APRA by failing to produce a record it was not obligated to maintain.



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## 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 "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Sylvia Brown