



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

June 29, 2012

Chalmer M. Harris
2851 Nevada Avenue
Evansville, Indiana 47710

Re: Formal Complaint 12-FC-172; Alleged Violation of the Access to Public Records Act by the Clerk of the Vanderburgh County Court

Dear Mr. Harris:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Vanderburgh County Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Susan K. Kirk responded in writing to your formal complaint. Here response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on June 8, 2012, you submitted a request for records to the Clerk for copies of all audio taped portions of a trial that occurred in September 2002. In response to your request, you allege that your request for access was denied, with no reason given.

In response to your formal complaint, Ms. Kirk advised that the Clerk does not maintain any audio or video tapes responsive to your request. You would need to contact the court report who was assigned to the trial.

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.

“[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 recording that are responsive to your request. 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 Vanderburgh County Circuit or Superior Court who presided over the trial. The Court, via the court reporter or other Court personnel, would be required to respond to your request pursuant to the requirements of the APRA. I have attached a link to the Indiana State Court Administration’s *Handbook on Public Access to Court Records* that may be helpful to all parties as it regards to your request for certain audio records of the Court:

<http://www.in.gov/judiciary/admin/files/pubs-accesshandbook.pdf>

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', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Susan K. Kirk