



# STATE OF INDIANA

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September 22, 2016

Mr. Albert B. Lucero III - #933307  
Indiana State Prison  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 16-FC-197; Alleged Violation of the Access to Public Records Act by the Lake County Clerk of Courts*

Dear Mr. Lucero:

This advisory opinion is in response to your formal complaint alleging the Lake County Clerk of Courts ("Clerk") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Clerk has responded via Shawn Miller, Felony Division Manager. It has been enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 11, 2016.

## BACKGROUND

Your complaint dated August 5, 2016, alleges the Lake County Clerk of Courts did not fulfill a public records request. On July 11, 2016, you requested from the Clerk a copy of a transcript of a recording of a hearing which took place on July 31, 2015. Subsequently, you asked for a CD recording of the proceeding, as well as the probable cause affidavit.

The Clerk responded to your formal complaint by explaining that the transcript was never prepared by the court reporter due to the fact your attorney did not request one to be created during your appeal. The Clerk maintains it does not have a recorded CD in its possession and the other materials can be obtained upon remittance of a copy fee.

## 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 Indiana Code § 5-14-3-1*. The Lake County Clerk of Courts is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Clerk's disclosable public records during

regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a).*

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c).* If the request submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b).* A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Clerk has stated it does not maintain the trial transcript you seek. Rather, it appears the Court indicated the transcript is available, pursuant to Indiana Appellate Rule 9(H), from the court reporter, who is not a public agency under the APRA. Because the trial transcript is not maintained by a public agency prior to its being created, the fee to create the transcript is not governed by the Access to Public Records Act. In fact, Indiana Appellate Rule 9(H) provides that when a transcript is requested, a party must make satisfactory arrangements with the court reporter for payment of the cost of the transcript. Unless a court order requires otherwise, each party shall be responsible to pay for all transcription costs associated with the transcript that party requests.

The same appears to be true of the recording of the proceeding although most courts do indeed retain the audio recording. Regardless, arrangements should be made by the Court Reporter for a copy. As to the other documents you seek, the response by the Clerk gives you instructions to obtain them.

#### CONCLUSION

Based on the foregoing, in the opinion of the Public Access Counselor the Lake County Clerk of Courts has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Shawn Miller