



STATE OF INDIANA

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March 24, 2009

William Woodford
DOC #852743
4490 West Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 09-FC-66; Alleged Violation of the Access to Public Records Act by the Lake County Clerk

Dear Mr. Woodford:

This advisory opinion is in response to your formal complaints alleging the Lake County Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. In my opinion the Clerk did not violate the APRA.

BACKGROUND

You allege that you requested a transcript of a sentencing hearing. You allege that you indicated to the court reporter you would pay the cost associated with preparing the transcript. You indicate the court reporter told you that you could obtain a copy of the transcript directly from the defendant in the case. You allege you have been denied access to records. Your complaint was postmarked on February 18, 2009, and my office received it on February 23.

My office sent a copy of the complaint to the Clerk and invited the Clerk to respond to the complaint. While the Clerk did not respond directly to the complaint, I see from the Clerk's Office's letter (which you included) that the Clerk contends the records related to the cause are on file with the Indiana Court of Appeals Clerk's Office and as such you should direct your request there.

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 clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of

the Clerk during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

You allege that you have been denied access to the sentencing transcript. Certainly I would agree with you that because the defendant is not a public agency, nothing in the APRA entitles you to receive a copy from him.

As I understand it, though, the Clerk contends the records you currently seek are on file in the Indiana Court of Appeals Clerk's Office. Nothing in the APRA requires an agency to retrieve records from another agency to fulfill a request. Instead, the APRA directs the requester to request records from the agency which maintains those records. *See* I.C. § 5-14-3-3. Because the records have been sent to the Indiana Court of Appeals, it is my opinion the Clerk has not denied you access to the requested records. It is my advice that you submit your request to the Indiana Court of Appeals.

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Thomas Philpot, Lake County Clerk