



STATE OF INDIANA

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October 1, 2009

Mr. Marvin F. Taylor, Sr.
DOC # 995801
Indiana State Prison / One Park Row
Indianapolis, IN 46360

Re: Formal Complaint 09-FC-199; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court Clerk

Dear Mr. Taylor:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, my opinion is that the Clerk did not violate the APRA because the document you requested does not exist.

BACKGROUND

According to your complaint, on August 7, 2009, you requested a copy of "the check or receipt of the bill that the [Clerk] paid to Wishard Health Services" for performing a medical test on you while you were in custody. You believe that the Clerk violated the APRA when the office "willfully and blatantly refuse[d]" to provide you with the record.

My office forwarded a copy of your complaint to the Clerk's office. The Clerk's response is enclosed for your reference. Mr. Scott Hohl, Chief of Staff for the Clerk, responded by saying that on both June 29, 2009 and July 15, 2009, you were informed that your file was reviewed and no such document existed.

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 does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. 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

exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

If the Clerk does not have the record you requested, it has not violated the APRA by failing to produce it to you. The APRA governs access to the existing, maintained public records of a public agency; 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.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA by failing to produce the record of payment to Wishard Health Services because such document does not exist.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, prominent initial "A".

Andrew J. Kossack
Public Access Counselor

Cc: Scott Hohl, Marion County Superior Court Clerk's Office