



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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May 20, 2010

Mr. Charles D. Lain  
DOC # 851558  
Indiana State Prison  
One Park Row  
Michigan City, IN 46360

*Re: Consolidated Formal Complaints 10-FC-101; Alleged Violation of the Access to Public Records Act by the Bartholomew County Court; and 10-FC-102; Alleged Violation of the Access to Public Records Act by the Bartholomew County Prosecutor*

Dear Mr. Lain:

This advisory opinion is in response to your formal complaints alleging the Bartholomew County Court ("Court") and Bartholomew County Prosecutor ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Because the allegations in both complaints concern the same issue, I have consolidated the complaints into this single opinion.

## BACKGROUND

According to your complaint, on March 31, 2010, you requested copies of video tapes from the Court and Prosecutor. You offered to have your family send blank videotapes to the agencies along with an indigency form. In response, the Prosecutor informed you that it no longer possessed the records because they were sent to the court to be used as evidence. The Court responded to your request by stating that it does not have access to equipment capable of copying the videotapes.

## ANALYSIS

Here, if the Prosecutor does not maintain the videotapes you requested, the Prosecutor did not violate the APRA by failing to produce copies of them to you. 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.*

As to the Court’s failure to produce copies of the videotapes, the APRA requires that a public agency either: (1) provide the requested copies to the person making the request; or (2) allow the person to make copies: (A) on the agency’s equipment; or (B) on the person’s own equipment. I.C. § 5-14-3-3(b). However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record. I.C. § 5-14-3-8(e). Thus, if the Court does not have the capability of reproducing the videotapes, the Court did not violate the APRA by failing to provide you with a copy. If you have equipment capable of copying the videotapes, it is my opinion that the Court should allow you to make those copies yourself pursuant to subsection 3(b)(2)(B). However, if the manual copying of such records would pose a danger of loss, alteration mutilation, or destruction as contemplated by section 7 of the APRA, the Court would not be required to permit you to make your own copies.

As to your declaration of indigency, I note that there is no provision in the APRA entitling you to copies of public records at no charge. A court *may* grant a waiver of fees but is not required by the APRA to do so. *See Opinion of the Public Access Counselor 10-FC-01.*

#### CONCLUSION

For the foregoing reasons, it is my opinion that neither the Court nor the Prosecutor violated the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Bartholomew County Court  
Bartholomew County Prosecutor