



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

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

December 6, 2010

Mr. Joshua R. Barnett
5501 S. 1100 W.
Westville, IN 46391

Re: Formal Complaint 10-FC-277; Alleged Violation of the Access to Public Records Act by the Clinton County Clerk

Dear Mr. Barnett:

This advisory opinion is in response to your formal complaint alleging the Clinton County Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The Clerk's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Clerk denied you access to several records you requested and failed to cite a statutory exemption permitting the Clerk to do so.

In response to your complaint, the Clerk states that she provided you with all of the records responsive to your request that are in the Clerk's possession. The Clerk does not have any records responsive to the remaining portions of your request.

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 contest that it is a "public agency" under the APRA. 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 public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

It is my understanding that the Clerk responded to your request and provided all responsive records in the Clerk's possession. If the Clerk has no other records responsive to the remaining portions of your request, the Clerk did not violate the APRA. "[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....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *Opinion of the Public Access Counselor 10-FC-56*.

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 that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

cc: Sherri N. Crews