



STATE OF INDIANA

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April 20, 2010

Mr. Michael V. Szarek
4490 W. Reformatory Road
Pendleton, IN 46064-9001

Re: Formal Complaint 10-FC-72; Alleged Violation of the Access to Public Records Act by the Clerk of the Lake County Circuit/Superior Court

Dear Mr. Svarek:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Lake County Circuit/Superior Court (the "Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I have enclosed the Clerk's response for your reference.

BACKGROUND

According to your complaint, the Clerk denied you access to a transcript for a hearing that occurred on September 11, 2007. You believe the Clerk's denial violated the APRA. In response to your complaint, the Clerk maintains that it has no records responsive to your request. The transcript was filed with the Indiana Supreme Court on appeal, and any notes for pretrial hearings would be in the possession of the court stenographer. The stenographer is an employee of the court rather than the Clerk.

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).

Here, the Clerk claims that it does not maintain the records that you requested. 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*; 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...”). Consequently, it is my opinion that the Clerk did not violate the APRA with respect to your request because the Clerk cannot produce records that it does not have.

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: Marilyn E. Hrnjak