



STATE OF INDIANA

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July 12, 2011

Mr. Gary F. Otto
DOC#: 905901
5124 West Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 11-FC-147; Alleged Violation of the Access to Public Records Act by the Clerk and Judge of the Vigo County Juvenile Court

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Clerk and Judge of the Vigo County Juvenile Court (the "Respondents") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Respondents on June 13, 2011, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that the Respondents failed to respond to a records request that you sent on May 6, 2011. You state that you have filed two petitions to the Respondents' court and have not received either a file-stamped copy of your petitions or a decision from the court regarding them. In your May 6, 2011, letter, you state, "I would like to know if the Petition I filed for my son . . . was filed and heard by the Judge and what the ruling was. [My son] was eligible to have this case expunged from his record March 26, 2011."

ANALYSIS

The public policy of the APRA states that "(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 Respondents are public agencies for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy their public

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

I note that although your request was submitted on a form titled, "REQUEST FOR ACCESS TO PUBLIC RECORD," it does not appear that you requested access to any specific records. Rather, you ask whether a petition for expungement was filed and heard by the judge. The APRA requires that requests for access to public records "identify with reasonable particularity the *record* being requested..." I.C. § 5-14-3-3(a)(1) (emphasis added). Nothing in the APRA requires a public agency to answer general questions or to create records in response to a request. *Op. of the Public Access Counselor 10-FC-86*. "[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." *Op. of the Public Access Counselor 01-FC-61*; see also *10-FC-56* ("Where records are not yet created, a public agency does not violate the APRA by refusing to produce them."). Consequently, it is my opinion that the Respondents did not violate the APRA by failing to answer the questions posed in your May 6, 2011, letter. That said, if you submit another request and ask for copies of records, the Respondents should respond to that request in accordance with the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Respondents did not violate the APRA because your request failed to identify any records for the Respondents to make available to you.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Hon. Daniel W. Kelly