



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 13, 2012

Eric S. McCoy  
5501 S. 1100 W  
Westville, Indiana 46391

*Re: Formal Complaint 12-FC-08; Alleged Violation of the Access to Public Records Act by the Allen County Clerk's Office*

Dear Mr. McCoy:

This advisory opinion is in response to your formal complaint alleging the Allen County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Lisbeth Borgman, Clerk of Courts, responded to your formal complaint. Her response is enclosed for your reference. I have granted your request priority status pursuant to 62 Indiana Administrative Code 1-1-3(3).

## BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Clerk for the "Oaths of Office" for a variety of public officials and employees and the chronological case summary for Cause No. 02-D04-1004-FA-20. On December 21, 2011, the Clerk responded to your request and provided the chronological case summary. As to the respective "Oaths of Office", the Clerk provided that except as to certain deputy prosecutors, it did not have any records that were responsive to your request. The Clerk requested further identifying information in order to process your request as to the deputy prosecutors. The Clerk further provided guidance as to which agencies to contact regarding each official or employee that you requested.

In response to your formal complaint, Ms. Borgman advised that all records responsive to your request were provided. In addition, the Clerk provided you with the respective organization or governmental entity that likely maintained the records that you were seeking.

## 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."

*See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Clerk responded to your request within the timelines provided by section 9 of the APRA.

Generally, 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..."). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, the Clerk provided that, with the exception of certain deputy prosecutors, it did not have any records that were responsive to your request. The Clerk directed you to the respective public agencies that it believed would have the records you were seeking. In regards to the deputy prosecutor records that were sought, the Clerk requested further identifying information in order to process your request. Therefore, it is my opinion that the Clerk did not violate the APRA in responding to your request. I would encourage you to provide the Clerk with the requested additional information so that it may process your request as to the records the Clerk maintains.



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## 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, appearing to read "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Lisbeth Borgman