



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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June 14, 2012

Mark A. Johnson  
DOC 192490  
1946 W. U.S. Highway 40  
Greencastle, Indiana 46135

*Re: Formal Complaint 12-FC-149; Alleged Violation of the Access to Public Records Act by the Monroe Circuit Court*

Dear Mr. Johnson:

This advisory opinion is in response to your formal complaint alleging the Monroe Circuit Court violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Karina Brikmanis, Court Reporter, responded to your request. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on May 30, 2012 you made a request of the Court for copies and transcripts from Cause No. 53-C01-0210-DR-688. In response, the Court provided the copies that were sought, but as to certain transcripts, the Court provided that the no actual hearing was held on the date requested or, the hearing was not recorded. Ms. Brikmanis submitted an affidavit to you regarding this issue with the Court's response.

In response to your formal complaint, Ms. Brikmanis advised that the hearings that you requested were not recorded, thus no transcripts can be prepared. The practice of the Court is to put a tape or CD number after the chronological case summary hearing entry if a hearing is recorded. None of the hearing dates that you have requested had tape and/or CD numbers in the entry. Ms. Brikmanis has searched the archives hearing cassette tapes and found no recording on the requested dates for the cause number that you cite.

## 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 Court 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 Court'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 twenty-four 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 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 Court responded to your request within the statutory requirements of 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 Court has advised that your request for transcripts could not be completed, as no recordings were made for the hearings that you requested. As such, it is my opinion that the Court did not violate the APRA by failing to provide a record that it did not maintain. I would also note that even if the Court had recordings of the hearings, if prior to receiving your request, the Court had not prepared a transcript, it was not have been required to create one in response to a request made pursuant to the APRA. It is possible that there are other avenues, outside the APRA, that may have compelled the Court to complete the transcript. However, as to a request made pursuant to the APRA, there would have been no requirement for the staff to create a transcript from any recording maintained by the Court.



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## CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage  
Public Access Counselor

cc: Karina Brickmanis