



STATE OF INDIANA

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August 10, 2012

Kenny L. Miller
4460 N. St. Rd. 5
Shipshewana, Indiana 46565

Re: Formal Complaint 12-FC-210; Alleged Violation of the Access to Public Records Act by the LaGrange County Superior Court

Dear Mr. Miller:

This advisory opinion is in response to your formal complaint alleging the LaGrange County Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jennifer Chaffee, Court Reporter, responded on behalf of the Court. Her response is enclosed for your reference.

BACKGROUND

On May 31, 2012, you submitted a request to the Court for preparation of a transcript of a hearing conducted on May 31, 2012. On July 19, 2012, you inquired as to the status of the transcript, at which time you allege that your request for the transcript was denied. As of July 30, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege you have yet to receive any records from the Court.

In response to your formal complaint, Ms. Chaffee advised that the Court did receive your request for a written transcript to be prepared for the hearing on May 31, 2012. At no time were you refused the right to access the court's file, the record, or anything related to the case. The transcript in question is now complete, and a copy will be forwarded to you upon receipt of payment.

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.

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, you made a request of the Court to create a transcript for certain hearings. A party is not entitled to the preparation of written transcript under the APRA. *See Opinions of the Public Access Counselor 06-FC-08 and 12-FC-49*. Although not applicable here, if the Court receives a request for a transcript that has previously been created, the requirements of the APRA would apply. Regardless, the Court has now indicated that the transcript has been completed and will be provided upon receipt of payment. As such, it is my opinion that the Court did not violate the APRA.

CONCLUSION

Based on the foregoing, it is my opinion that the Court did not violate the APRA.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Jennifer Chaffee