



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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September 18, 2012

Termaine D. Chapman  
DOC 892147  
4490 W. Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 12-FC-243; Alleged Violation of the Access to Public Records Act by the Clerk of the Allen County Circuit and Superior Court*

Dear Mr. Chapman:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Allen County Circuit and Superior Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Lisbeth A. Borgman, Clerk of Courts, responded in writing to your formal complaint. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Clerk for records related to your criminal proceeding. The Clerk responded in writing and provided that the agency does not maintain any records that were responsive to your request. You believe that the Clerk violated the APRA by failing to provide any documents in response to your request.

In response to your formal complaint, Ms. Borgman advised that the Clerk does not maintain any records that are responsive to your request. The Clerk directed you to make an inquiry with the Allen County Prosecutor regarding the records that are sought.

## 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).



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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.

The Clerk has provided that it does not maintain any records that are responsive to your request. 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*. The Clerk has provided that it does not maintain any records that are responsive to your request. As such, it is my opinion that the Clerk did not violate the APRA by failing to produce a record that it did not maintain.



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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 A. Borgman