



STATE OF INDIANA
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October 12, 2012

Randall S. Tison
DOC 127788
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-294; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Clerk of Courts

Dear Mr. Tison:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Clerk of Courts ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Susan K. Kirk 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 "the total requests of criminal cases that have been requested from January 1, 2010 to August 1, 2012 and how many had been denied." You provide that you are not asking the Clerk to conduct research, only to provide the respective totals.

In response to your formal complaint, Ms. Kirk advised that the Clerk does not maintain a record that is responsive to your request, as the Clerk does not keep such statistical information.

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 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.

“[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....”). Further, an agency is not required to conduct research in response to a request for records. *See Opinions of the Public Access Counselor 03-FC-146; 05-FC-25; 12-INF-01*. Here, 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 or conduct research on your behalf.

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', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Susan K. Kirk