



STATE OF INDIANA

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July 25, 2011

Mr. Michael V. Szarek
DOC # 173539
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 11-FC-155; Alleged Violation of the Access to Public Records Act by the Lake County Superior Court

Dear Mr. Szarek:

This advisory opinion is in response to your formal complaint alleging the Lake County Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Court on June 24, 2011, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that you submitted a request in writing for stenographic transcripts of hearings under Cause No. 45-G04-0701-MR-00002 that occurred on January 18, 2007, May 15, 2007, September 4, 2007, September 11, 2007, September 25, 2007, October 4, 2007, and October 9, 2007.

Although we did not receive a response from the Court to your formal complaint, you did provide a copy of the Court's Order in response to your initial request. The Order stated the following:

"The defendant files pro se Request for Access to Public Record which is in effect a request to obtain transcripts with an Affidavit of Indigency attached. The Court will not assume the costs of transcribing hearings without a specific reason why the defendant needs them. The defendant may contact the court reporter listed below to inquire about the costs of transcription. If the defendant wants to request a hearing, he should file a Motion for Transcripts specifically stating the reason(s) for the request."

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.” I.C. § 5-14-3-1. The Court is a public agency for the purposes of the APRA. 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. I.C. § 5-14-3-3(a).

A request for records may be oral or written. 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. 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. I.C. § 5-14-3-9(b). 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 seven-day period that APRA prescribed for responding to written requests.

APRA does not require public agencies to create records to satisfy a request. *See Opinion of the Public Access Counselor 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”). In a 2007 opinion, Counselor Davis provided guidance concerning a request for transcripts pursuant to the APRA:

Generally speaking, the APRA does not address the situation in which a litigant has filed a request with a court reporter to produce a transcription of a hearing. This is because the APRA does not extend the right to have a new record created. Hence, although you may have a right to the record of proceedings, including a transcription of the hearing, you are not entitled to have the hearing transcribed by a court reporter under the APRA.

Opinion of the Public Access Counselor 07-FC-43. The Court instructed you in their June 1, 2011 order to contact the court reporter assigned to each hearing you requested to allow you to inquire about the costs of having the hearings transcribed. The Court further provided that they would not assume the costs of transcribing the hearings without a specific reason. It can be inferred from the Court’s response that audio recordings do exist from the hearings that you have requested. The Court is not denying your request for the records; it is attempting to determine what costs, if any, are to be associated with transcribing the records. The Court has further provided you the proper avenue of requesting a hearing on the matter should you so desire.

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". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Hon. Natalie Bokota, Lake County Superior Court