



# STATE OF INDIANA

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March 25, 2011

Michael J. Shepard  
4724 Penfold Street  
Evansville, IN 47725

*Re: Formal Complaint 11-FC-58; Alleged Violation of the Access to Public Records Act by the Clerk of the Vanderburgh Circuit and Superior Courts*

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Vanderburgh Circuit and Superior Courts ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Clerk's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on February 1, 2011, you requested "a current chronological case summary for cause number 82C01-0004-CF-469." You claim that because the Clerk never responded to your initial request, you made a second request for the same records on February 8, 2011. To this date, you allege that the Clerk has neither responded to your February 1<sup>st</sup> or February 8<sup>th</sup> requests.

Ms. Susan K. Kirk, Clerk for Vanderburgh Circuit and Superior Courts responded to your complaint. Ms. Kirk states that the Clerk has already provided you with all records responsive to your request. Ms. Kirk advised that you have made continual requests for this same record, and the Clerk has repeatedly produced this record to you.

## 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 Clerk 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 Clerk'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 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). 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). 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. However, an agency is not required to continue to respond to the same request for access to records. *See Op. of the Public Access Counselor 09-FC-211*. Consequently, if the Clerk had already responded in full to a previous request from you that sought access to the same documents, in my opinion the Clerk was not obligated to respond to your duplicate February 1st request.

Moreover, the APRA does not require public agencies to provide multiple copies of the same record to a requester. In 2005, Counselor Davis issued an opinion under circumstances and reached the same conclusion:

Although under Indiana Code section 5-14-3-8(e), a public agency must provide at least one copy of a public record to a person, there is no requirement that a public agency provide multiple copies to the same person. According to the Department, you have already been provided a copy of the tape that you continue to request. You apparently sent the tape to the Court in furtherance of your appeal. Nevertheless, the Department is not obligated to provide multiple copies of a public record to you so long as one copy has been provided. Accordingly, it is my opinion that since you have already obtained from the Department a copy of the tape, the Department's decision not to provide additional copies to you was not a denial under the APRA. *See Opinion of the Public Access Counselor 01-FC-07*.

*See Opinion of the Public Access Counselor 05-FC-194*. Because I agree with Counselor Davis' reasoning, it is my opinion that the Clerk does not violate the APRA by refusing to provide you with another copy of the responsive records. Only if the record is ever modified or changed would the Clerk have to produce the newly modified record to you.

#### CONCLUSION

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

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Susan K. Kirk