



# STATE OF INDIANA

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July 26, 2013

Mr. Oscar W. Hall  
DOC 974769  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 13-FC-188; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court*

Dear Mr. Hall:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Andrea Brandes Newsom, Court Administrator, responded in writing to your formal complaint. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint you provide that on May 13, 2013, you submitted a request to the Court to obtain certain transcripts from your guilty plea hearing and sentencing. You were informed in writing that the cost of preparing the requested transcripts would be provided to you by the Court Reporter. On June 4, 2013, you submitted a request to the Court seeking an update as you had yet to receive any written correspondence from the Court Reporter. As of July 2, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that you have still yet to receive any response from the Court regarding the cost to create the requested transcripts.

In response to your formal complaint, Ms. Newsom advised that the Court does not maintain any records responsive to your request. The Court does maintain audio recordings of the hearings requested, but the Court has never prepared written transcripts from said hearings. Each Court Reporter has been advised of your request and is in the process of compiling a cost estimate for the transcript preparation. The estimates will be forwarded to you upon completion and it will be your responsibility to make the appropriate payment arrangements in order for the transcript to be created.

## 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).

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*. Pursuant to the APRA, the Clerk and/or Court Reporter would not be required to prepare a written transcript for you; as the transcript is a new record and an agency is not required to create a new record in response to a request. *See Opinion of the Public Access Counselor 06-FC-08*. As such, it is my opinion that the Court did not violate the APRA, as a written transcript has never been created for the hearings requested. As the respective Court Reporters have indicated that a cost estimate for transcript preparation will be forwarded to you, I trust this to be in satisfaction of your formal complaint.

## CONCLUSION

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

Best regards,



Joseph B. Hoage  
Public Access Counselor

cc: Andrea Brandes Newsom