



STATE OF INDIANA

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March 25, 2013

Mr. Michael A. Christianson
DOC 135489
3038 W 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 13-FC-90; Alleged Violation of the Access to Public Records Act by the Shelby County Circuit Court

Dear Mr. Christianson:

This advisory opinion is in response to your formal complaint alleging the Office of the Shelby County Circuit Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Vicki Franklin, Clerk of Courts, responded on behalf of the Court. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on February 22, 2013, you submitted a written request for records to the Court. As of March 15, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Court has failed to respond to your request in any fashion.

In response to your formal complaint, Ms. Franklin advised that upon receipt of your formal complaint a copy of your request was found in the Court's file with a note stating "not provided per court." Ms. Franklin determined that you had not been notified why the requested records has not been provided. On March 18, 2013, Ms. Franklin sent written correspondence that advised the records sought had not been filed in the referenced cause number that you provided. As such, the Court did not maintain any records responsive to your 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." *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).

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 24 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 (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, the Court acted contrary to section 9(b) of the APRA by failing to respond in writing to your written request within seven (7) days of its receipt.

Immediately upon receiving your formal complaint, Ms. Franklin determined that the Court did not have any records in its file under the cause number referenced that were responsive to your request. This was communicated to you in writing on March 18, 2013. If a public agency has no records responsive to a public records request, the agency generally 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*. It is my opinion that the Court would not violate the APRA by failing to provide a record that it did not maintain.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court acted contrary to section 9(b) of the APRA in failing to respond in writing within seven (7) days of the receipt of your written request. As to all other issues, 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'.

Joseph B. Hoage
Public Access Counselor

cc: Vicki R. Franklin