



STATE OF INDIANA

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June 18, 2008

Jeff Hager
PO Box 1088
Muncie, Indiana 47308

Re: Formal Complaint 08-FC-144; Alleged Violation of the Access to Public Records Act by the Henry Circuit Court

Dear Mr. Hager:

This advisory opinion is in response to your formal complaint alleging the Henry Circuit Court ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to an audio recording of a child support hearing. A copy of the Court's response to your complaint is enclosed. It is my opinion the Court has not violated the APRA by failing to produce a record that does not exist.

BACKGROUND

In your complaint you allege that you requested from the Court a copy of audio recordings of child support hearings. You allege the Judge has indicated to you that not all hearings are recorded. You filed this complaint on May 29, 2008, alleging denial of access. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Court responded to the complaint by letter dated June 2 from Judge Mary G. Willis. Judge Willis contends that you have not identified any specific document or voice recording you have requested. Regarding child support hearings, Judge Willis indicates that such hearings are conducted on Fridays. Henry County Local Rule LR33-FL00-1(E), approved by the Indiana Supreme Court, provides that Friday hearings are not recorded.

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 clearly 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 public records of the Court during regular business hours unless the public records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2.

The Court contends that while you have not made a request for a specific record, you have requested copies of recordings of child support hearings. The Court contends that audio recordings are not made of such hearings, pursuant to Henry County Local Rule LR33-FL00-1(E), approved by the Indiana Supreme Court, which provides the following:

(E)FRIDAY HEARINGS. Hearings scheduled in provisional matters, IV-D Child Support Matters, Contempt Citation and Visitation matters set on Fridays are not recorded and are set for a maximum of 15 minutes with only the parties as witnesses. If a party desires to have the matter recorded, has additional witnesses or believes the matter will take longer than 15 minutes then a continuance should be requested and the matter set on a day other than Friday.

If an audio recording of the hearing existed, it would be subject to inspection and copying under the APRA and Ind. Administrative Rule 9 so long as no exceptions to disclosure are present. I.C. § 5-14-3-3. To the extent a recording does not exist, the Court does not have an obligation to provide records that do not exist. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

CONCLUSION

For the foregoing reasons, it is my opinion the Court has not violated the APRA by failing to produce a record that does not exist.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: The Honorable Judge Mary G. Willis, Henry Circuit Court