

October 15, 2007

Paul Lewis
PO Box 30
Pendleton, Indiana 46064-0030

Re: Formal Complaint 07-FC-278; Alleged Violation of the Access to Public Records Act by the Monroe Circuit Court II

Dear Mr. Lewis:

This is in response to your formal complaint alleging the Monroe Circuit Court II ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying your request for records. A copy of the Court's response to your complaint is enclosed for your reference. I find that the Court did not violate the APRA.

BACKGROUND

In your complaint you allege you submitted a request to the Court a request for juror lists for two trials as well as an individual's emergency room records. You allege the Court denied you access to those records on August 21. You mailed your complaint on September 12, and I received it on September 14. 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 your complaint in a letter dated October 3, indicating the Court as a matter of course does not disclose the names of jurors to avoid the possibility of placing them in harm's way. Judge Marc Kellams indicated he personally reviewed the jury lists you seek and determined no jurors served on both panels and in fact were selected from different jury pools. Regarding the medical records you requested, the Court indicates those records contain confidential information the Court will not release without a proper legal request and review.

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." Ind. Code §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).

Records declared confidential by state statute or required to be kept confidential by federal law may not be disclosed by a public agency unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. §5-14-3-4(a). Records declared confidential by or under rules adopted by the supreme court of Indiana may not be disclosed. I.C. §5-14-3-4(a).

The issue of disclosure of names of jurors has been addressed by the public access counselor in *Opinion of the Public Access Counselor 04-FC-27*. There, Counselor Hurst relied upon Indiana Administrative Rule 9, which declares confidential personal information relating to jurors or prospective jurors not disclosed in open court. Admin. R. 9(L). Further, Indiana Jury Rule 10 governs juror safety and privacy and similarly provides that “[p]ersonal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel.” J.R. 10. That rule further provides that the “court shall maintain that confidentiality to an extent consistent with the constitutional and statutory rights of the parties.” J.R. 10. Furthermore, as Counselor Hurst indicated, “our state supreme court has similarly recognized that the ‘names’ of jurors are personal information that should not be subject to disclosure except under extraordinary and limited circumstances.” See *Matheney v. State*, 688 N.E.2d 883, 894 (Ind. 1997), *overruled on other grounds*, *Jackson v. State*, 709 N.E.2d 326, 329 (Ind. 1999). *Opinion of the Public Access Counselor 04-FC-27*. It is my opinion the Court here did not violate the APRA by not disclosing the names of jurors pursuant to your request.

Regarding the emergency room records you sought, the APRA prohibits disclosure of records required to be kept confidential by federal law. I.C. §5-14-3-4(a). Judge Kellams has indicated the medical records you seek contain confidential information and as such will not be disclosed. So long as the Court can bear the burden of proof of nondisclosure, which I assume the Court can easily do by citing the federal or state legal authority declaring the medical information confidential, the Court has not violated the APRA in this regard.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Judge Marc Kellams, Monroe Circuit Court II