

March 27, 2008

Bob Segall  
1000 North Meridian Street  
Indianapolis, Indiana 46204

*Re: Formal Complaint 08-FC-72; Alleged Violation of the Access to Public Records Act by  
the Marion County Superior Court 19*

Dear Mr. Segall:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court 19 (“Court”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by improperly redacting information from records. It is my opinion the Court has violated the APRA by redacting information from the records without providing applicable statutory authority.

#### BACKGROUND

In your complaint you allege that you appeared at the Court on February 15, 2008 and requested access to a case file. You were allowed to inspect the file in the clerk’s office for approximately thirty minutes. You then requested a copy of the complaint and summons contained in the file. The clerk indicated she was not allowed to provide you a copy of the record. You asked her to discuss the matter with her supervisor, who then told her she could provide the copy only after she redacted personal information. The clerk redacted the person’s street address, date of birth, driver license number, and location of arrest. You allege that this information is available via multiple documents within the court file as well as reports available to the public through the Indianapolis Metropolitan Police Department and in local media reports. You allege that you have tried to reach the supervisor involved as well as the Marion County Clerk of the Courts Chief of Staff to no avail. You filed this complaint February 28.

My office provided a copy of the complaint to the Indianapolis Public Access Counselor in the Office of Corporation Counsel for the City of Indianapolis, who generally assists in responding to complaints against city and county agencies. My office called the counselor this week to inquire whether the office would be responding, and the counselor indicated the Court had declined to respond to this complaint.

## ANALYSIS

The public policy of the APRA states, "(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).

Here, the redacted information was "personal information" of the defendant named in the case file. The Court allowed you to inspect all information contained in the file but then redacted portions of the record when you requested a copy. Regarding the redacted information, I find no specific exemption in I.C. § 5-14-3-4 allowing or requiring the Court to withhold the information.

Section 4 of the APRA contains mandatory exceptions to disclosure in subsection 4(a). Subsection 4(b) contains discretionary exceptions. If the Court denied access to the information based on an exemption in I.C. § 5-14-3-4(a), the Court should have denied access for inspection as well as copying. If a record is confidential under state or federal statute or rules of the Indiana Supreme Court, access to the record may not be provided for inspection *or* copying (*See* I.C. § 5-14-3-4(a)(1),(3), and (8)). If the Court denied access to the record based on a discretionary exception found in subsection 4(b), the Court could argue it was exercising its discretion by allowing inspection and but not copying. Because we do not have the benefit of the Court's argument regarding the applicable exception to disclosure, I cannot provide an opinion on that matter.

Regardless of the exception to disclosure the Court relied upon to redact the information, it is my opinion the Court had a duty to provide you the statutory authority requiring the Court to withhold the information. While the APRA only requires an agency to provide a statement of the specific exemption(s) authorizing the withholding of all or part of the public record when the request is made in writing (*See* I.C. § 5-14-3-9(c)), the agency bears the burden of proof to sustain the denial if the requester files an action in court. I.C. § 5-14-3-9(f). The Court here has provided no information to suggest it could sustain the denial of this information.

## CONCLUSION

For the foregoing reasons, it is my opinion the Court has violated the Access to Public Records Act.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Jennifer Jenkins, Marion County Superior Court 19  
Lauren Toppen, Office of Corporation Counsel, City of Indianapolis