



STATE OF INDIANA

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June 7, 2010

Ms. Amelia D. Sturgis
815 Dreyer Lane
Sellersburg, IN 47172

Re: Formal Complaint 10-FC-115; Alleged Violation of the Access to Public Records Act by the Clark County Circuit and Superior Court

Dear Ms. Sturgis:

This advisory opinion is in response to your formal complaint alleging the Clark County Circuit and Superior Court (the "Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The Court's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you visited the Court and requested access to your "case file." The Court denied access to the file based on a motion to seal it, which was filed by the adverse party in your lawsuit. You state that you want to see the file so that you can respond to the motion. I note that your request for priority status was rejected due to the fact that the subject of your complaint is the same entity from which you have requested the records at issue.

My office forwarded a copy of your complaint to the Court. Barbara Bratcher Haas, the Court clerk, responded to you via letter dated May 17, 2010, and copied our office. Ms. Haas stated that she was not sure about the location of the file you requested, but that she would search for it and notify you once it is located. She further states that you should be able to access the file unless the judge orders it confidential.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. I.C. § 5-14-3-3(a). The Court is a public agency under the APRA. I.C. §5-14-3-2(1)(2)(C). If a

public agency receives a request for a record in person, the public agency must issue a response within 24 hours of receiving the request. If the request is in writing, the public agency may deny the request if the denial is in writing and states the specific exemption or exemptions authorizing the withholding of the record, and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). A public agency bears the burden of showing that a record is exempt under the APRA. IC 5-14-3-9(f).

Under section 4 of the APRA, a public agency may not disclose records declared confidential by or under rules adopted by the supreme court of Indiana. I.C. § 5-14-3-4(a)(8). Confidentiality of court records is governed chiefly by Administrative Rule 9, which was adopted by the Indiana Supreme Court. The rule applies to court records, which is defined as both case records and administrative records. Admin. R. 9(C)(1). “Case record” means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case. Admin. R. 9(C)(2). All persons have access to court records as provided in Administrative Rule 9. Admin. R. 9(B)(1). However, some case records are confidential, pursuant to Administrative Rule 9(G).

Administrative Rule 9 deems confidential information excluded from public access by specific court order. Admin. R. 9(G)(1)(c). Here, I understand that a motion to seal the requested records is pending with the Court. The outcome of that motion will determine whether or not you may or may not access the records under the APRA. If the motion is denied, I see no reason why you could not access the records you seek. However, if the motion to seal the records was pending at the time you requested them, in my opinion the Court did not violate the APRA by denying your request at that time.

I encourage the clerk to locate the relevant records and, if they are not sealed, produce them to you as soon as practicable. I remind the clerk that the APRA requires public agencies to “protect public records from loss, alteration, mutilation, or destruction.” I.C. § 5-14-3-7(a).

CONCLUSION

For the foregoing reasons, it is my opinion that if the motion to seal the records was pending at the time of your request, the Court did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Barbara Bratcher Haas