



STATE OF INDIANA

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August 31, 2010

Mr. Adam Lenkowsky, Esq.
118 N. Delaware St.
Indianapolis, IN 46204

Re: Formal Complaint 10-FC-170; Alleged Violation of the Access to Public Records Act by the Marion County Court Administrator

Dear Mr. Lenkowsky:

This is in response to your formal complaint regarding alleging the Marion County Court Administrator (the "Administrator") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Administrator's response is enclosed for your review.

BACKGROUND

In your complaint, you allege that on July 21, 2010, you requested "Justice Information Reports showing defendants that have been charged with gambling offenses" from the Administrator. The City of Indianapolis' (the "City") legal department denied your request on that basis that, as "compiled information" or "bulk distribution," it was subject to Ind. Administrative Rule 9 (the "Rule"), which requires such requests to be submitted to the Executive Director of the Division of State Court Administration (the "Division"). You do not dispute that the information you requested falls within the ambit of the Rule. Rather, you argue that the APRA does not contain a restriction requiring you to submit your request to the Division. You posit that a plain reading of the APRA does not prohibit you from requesting the information directly from the Administrator and seek an opinion regarding what you view as a conflict between the APRA and an Indiana Supreme Court rule.

City of Indianapolis Assistant Corporation Counsel Mark A. Mertz responded to your complaint on behalf of the Administrator. Mr. Mertz maintains that the Administrator responded to your request in accordance with the Rule and denies that it conflicts with the APRA. He notes that the Administrator oversees a court that resides within the judicial branch of State government and is subject to the State's court system

and Indiana Court Rules, including administrative rules adopted by the Indiana Supreme Court. Mr. Mertz also argues that the Administrator's response to your request was not a "denial" of the request, but an explanation of the proper way to make such a request. The response informed you of the appropriate official to receive the request and that the request would be processed if and when such a request was made. Mr. Mertz claims that the Rule does not conflict with the APRA because it does not make records inaccessible, impose a fee in excess of the fees allowed by the APRA, or delay access to records beyond the time allowed by the APRA.

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 Administrator does not contest that it is a "public agency" under the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the Administrator's public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

As of January 1, 2005, the Indiana Supreme Court adopted a version of Ind. Administrative Rule 9 that prescribes procedures for the distribution of bulk records. Admin. R. 9(F); *see also Opinion of the Public Access Counselor 05-FC-82; Informal Opinion 09-INF-35; Access to Bulk Records*, available at <http://www.in.gov/pac/informal/files/09-INF-35.pdf>. You question whether the Rule conflicts with the APRA by requiring that requests for compiled information or bulk distribution of records be submitted to the Division. Section 3 of the APRA requires that a "request for inspection and copying must (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing or in a form provided by the agency." I.C. § 5-14-3-3(a). Accordingly, the Indiana Supreme Court promulgated the Rule and designated in it the form for requesting compiled information and bulk distribution of records. This process is not unlike the process followed by many public agencies when they receive requests over the phone or in person. Often the agencies require such requests to be submitted in writing to the agencies' legal counsel. Such processes, like the requirements for compiled information and bulk distribution requests in the Rule, are permitted by the APRA. Thus, in my opinion the process outlined in the Rule for requesting compiled information and bulk records does not conflict with the APRA.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a prominent initial "A".

Andrew J. Kossack
Public Access Counselor

cc: Mark Mertz