



STATE OF INDIANA

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September 12, 2011

Mr. Rocky M. Shroyer
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 11-FC-231; Alleged Violation of the Access to Public Records Act by the Madison County Unified Courts-Circuit Court 1

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Madison County Unified Courts-Circuit Court 1 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Judge Rudolph R. Pyle III responded on behalf of the Court. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request in writing on July 14, 2011 to the Court for a copy of the Affidavit of Probable Cause filed under Cause No. 48-C01-0204-FC-085, State of Indiana vs. Michael Davis. On August 30, 2011, you received from the Court a "Criminal Notice" with no explanation from the Court as to why or if your request was denied.

In response to your formal complaint, the Court advised the probable cause affidavit detailed an assault on a Department of Correction employee. Michael Davis, the person who was the subject of the probable cause affidavit, was serving an eight-year sentence at the Pendleton Correctional Facility ("Facility") as a result of the attack. The Court further provided that you are currently housed at the Facility. Because you were requesting information about a case involving violence against a Department of Correction employee that involved a defendant housed at the same Facility where you are currently located, the Court declined your records request.

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."

See I.C. § 5-14-3-1. The Court is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Court's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. If the Court did not respond to your written request with seven (7) days of its receipt, it acted contrary to subsection 9(b) of the APRA.

It is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an "offender" for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). You are currently housed at the Facility. The APRA contains an exception to disclosure to an "offender" for a record that contains personal information relating to a correctional officer or that could affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
- (ii) the victim of a crime; or
- (iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23).

The probable cause affidavit that you requested detailed an assault on a correctional officer at the Facility. Further, you and the defendant noted in the probable cause affidavit are both housed at the Facility. Thus, the Court could act within its discretion to withhold records that contain personal information relating to a correctional officer or that would concern or affect the security of a correctional facility. As such, it is my opinion that the Court did not violate the APRA by not providing you with a copy of the probable cause affidavit that was requested.

CONCLUSION

For the foregoing reasons, if the Court did not respond to your written request within seven (7) days, it acted contrary to subsection 9(b) of the APRA. In all other respects, it is my opinion that the Court did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is written in a cursive, slightly slanted style.

Joseph B. Hoage
Public Access Counselor

cc: Judge Rudolph R. Pyle III