



STATE OF INDIANA

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September 22, 2011

Mr. Larry D. Dearborn
DOC#: 186476
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 11-FC-237; Alleged Violation of the Access to Public Records Act by the Madison County Circuit Court

Dear Mr. Dearborn:

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

BACKGROUND

In your complaint, you allege that you served two records requests on the Court clerk on August 29, 2011. You sought to inspect and copy an affidavit of probable cause filed in "State of Indiana v. Tracy McGrady, State of Indiana v. Sarah Chambers, State of Indiana v. Connie Knuth, and State of Indiana v. Casandra L. White." You claim that as of the date you filed your formal complaint you have not received a response from the Clerk regarding your request.

In response to your complaint, Madison County Circuit Court Clerk Darlene Likens (the "Clerk") stated that her office received your request on August 30, 2011. The Clerk advised that your request lacked detail, particularly the cause numbers for the four (4) cases that were requested. Upon receiving your formal complaint, the Clerk conducted a further search for any records that might be responsive to your request; later identifying the four (4) cases. The Clerk advised that because you are an offender, she denied your request pursuant to I.C. § 5-14-3-4(b)(23) as the records you requested contain personal information relating to four (4) correctional officers who were charged with trafficking with an inmate and disclosing the records could affect the security of a jail or correctional facility.

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. *See* I.C. § 5-14-3-3(a). The Court is a public agency under the APRA. *See* I.C. § 5-14-3-2. The public agency bears the burden of showing that a record is exempt under the APRA. I.C. § 5-14-3-9(f).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). 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. I.C. §5-14-3-9(b). 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. When a request is made in writing and the agency denies the request, the agency must also deny the request in writing and must 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. I.C. § 5-14-3-9(c). Thus, if the Court neither responded to your request nor provided you with a written denial citing a basis for withholding records you requested, the Court violated the APRA.

It is my understanding based on the Clerk's assertion and your mailing address that you are confined in a penal institution as the result of the conviction for a crime. As such, you are an "offender" for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure for information that could affect the security of a jail or correctional facility or if the record contains personal information related to a correctional officer, specifically excepting the following:

- 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). Thus, the Court acted within its discretion to withhold records that could affect the security of a jail or correctional facility. Therefore, I do not find that the Court violated the APRA by exercising the discretion provided to it under the statute in denying your request.

The APRA requires public agencies to separate and/or redact the nondisclosable information in public records in order to make the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). The Indiana Court of Appeals held that Ind. Code § 5-14-3-6(a) requires an agency to separate disclosable information from the nondisclosable information where the two types of information are not "inextricably linked." *Indianapolis Star v. Trustees of Indiana University*, 787 N.E.2d 893, 914 (Ind.Ct.

App. 2003). Thus, if any of the records at issue contain information that would not fall under the exception provided in I.C. § 5-14-3-4(b)(23) and the disclosable information is not inextricably linked to the nondisclosable material, the Court should redact the proscribed material and produce the remainder of the record.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Court did not respond to your request within seven (7) days, it violated the APRA. In all other aspects, it is my opinion that the Court did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Darlene Likens, Madison County Circuit Court Clerk