



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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Mr. Curtis McGinnis
DOC # 129893
5124 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 11-FC-67; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court, Criminal Division Five

Dear Mr. McGinnis:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court, Criminal Division Five ("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

According to your complaint, on February 11, 2011, you requested "access to hear, inspect, and review, the in-Court [sic] cross-examinations [sic] and re-cross examinations [sic] of three witnesses who testified at the complainants [sic] Jury Trial that was held [in the Court in May of 2003]." You claim that the Court never responded to your request.

In response to your complaint, Judge Hawkins states that he did not receive your request until he received it from our office attached to the copy of your formal complaint. As to the substance of your request, Judge Hawkins responds that the Court does not have the capability of transporting you to the Court to satisfy your request. He also notes that this complaint is substantially similar to a complaint you filed against Judge Mark Stoner Marion County Superior Court, Criminal Division Six late last year. In that opinion, I concluded that Judge Stoner did not violate the APRA.

ANALYSIS

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 days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). Here, the Court asserts it did not receive your request until it received it along with your

formal complaint. If the Court had received your request, it would have had a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Court did not receive your request, it did not violate the APRA by not responding. *See Op. of the Public Access Counselor 09-FC-139.*

Moreover, as I noted in response to your previous complaint against Judge Stoner, the APRA does not require a public agency to make special arrangements with the Department of Correction to allow an incarcerated individual to inspect public records in person. *Op. of the Public Access Counselor 10-FC-329.* You ask what options you have for accessing the records you seek while you remain incarcerated. Unfortunately, your inability to physically appear at the Court significantly limits your ability to inspect the records yourself, *see id.*, but a reasonable alternative would be to arrange for your attorney or another representative to inspect the recordings on your behalf. In any event, the Court did not violate the APRA by refusing to transport you to the Court to perform the inspection yourself. *Id.*

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Hon. Grant W. Hawkins