



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 24, 2012

Michael J. Shepard  
3500 N. Harlan Avenue  
Evansville, Indiana 47711

*Re: Formal Complaint 12-FC-13; Alleged Violation of the Access to Public Records Act by the Warrick County Superior Court*

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Warrick County Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Judge Keith A. Meier responded on behalf of the Court. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Court on December 25, 2011 for public records pursuant to the APRA. You requested copies of certain chronological case summaries and all file marked motions submitted within the last sixty days. As of January 12, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have not received a response from the Court.

In response to your formal complaint, Judge Meier advised that the Court received your request on December 28, 2011. The request was forwarded by the Court staff to Judge Meier due to its conflicting nature. You requested the "return of" (rather than a file-marked copy) of previously filed motions. The Court does not return documents filed with the Court, as they are original records. Judge Meier thereafter instructed Court staff to provide you with file-marked copies of all records from both cases for the last sixty days, above and beyond what you had requested. The Court was closed for the holidays on December 30, 2011 and January 4, 2012. Due to the holidays and being short-staffed, all records responsive to your request were not sent until January 9, 2012.

## 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. The Court received your request on December 28, 2011; as such it was required, at a minimum, to acknowledge its receipt by January 4, 2012. The Court has advised that due to the holidays and being short-staffed, it did not respond to your request until January 9, 2012, at which time it produced all records. Accordingly, it is my opinion that the Court technically violated the APRA by failing to timely respond to your written request within seven days of its receipt.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.



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Here the Court received your request for records on December 28, 2011. The Court advised that it was closed for the holidays on December 30, 2011 and January 4, 2012. Along with the holidays, the Court indicated during the time of your request it was short-staffed. All documents that were responsive to your request were sent on January 9, 2012. You filed your formal complaint with the Public Access Counselor's Office on January 12, 2012. Thus, the Court provided all records that were responsive to your request within twelve days of the receipt of your original request, or within six business days. As such, it is my opinion that the Court responded and provided all records in response to your request in a reasonable period of time.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Court technically violated the APRA by failing to respond to your written request within seven days of its receipt. However, I would note that it is evident from the Court's response that it intended in every fashion to respond to your request within the spirit and letter of the APRA, which beyond being five days late in responding to your request; it complied with in every facet.

Best regards,

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

Joseph B. Hoage  
Public Access Counselor

cc: Judge Keith A. Meier