



STATE OF INDIANA

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October 12, 2012

Mr. Jerry E. Davis
089850
EKCC, 200 Road to Justice
West Liberty, Kentucky, 41472

Re: Formal Complaint 12-FC-295; Alleged Violation of the Access to Public Records Act by the Vanderburgh Circuit and Superior Court

Dear Mr. Davis:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh Circuit and Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Susan K. Kirk, Clerk of Courts, responded on behalf of the Court. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a written request for all criminal records on Melvin Porter Carson. The Court responded in writing to your request and advised that it could not conduct a criminal history check in the manner you have requested.

In response to your formal complaint, Ms. Kirk advised that you requested that the Court perform a criminal records check on Mr. Carson. Ms. Kirk further advised that you did not provide the pertinent identifying information in order to allow the agency to identify the Mr. Carson (i.e. date of birth, address, social security number, etc...). Without providing such information, the Court is unable to process your 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 twenty-four 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 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 APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *See Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88*. As applicable here, the Court is unable to provide any records that are responsive to your request until you provide further identifying information on Mr. Carson. At the time you submit such information, the Court will provide you with the respective fees to produce all such records. As such, it is my opinion that the Court did not violate the APRA as it cannot process your request until you provide further information in order to specifically identify the individual who is the subject of your request for criminal records.

CONCLUSION

For the foregoing reasons, 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', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Susan K. Kirk