



STATE OF INDIANA

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April 15, 2013

Mr. Roosevelt N. Williams
DOC 974618
P. O. Box A
New Castle, Indiana 47362

Re: Formal Complaint 13-FC-111; Alleged Violation of the Access to Public Records Act by the Indiana Supreme Court Disciplinary Commission

Dear Mr. Williams:

This advisory opinion is in response to your formal complaint alleging the Indiana Supreme Court Disciplinary Commission (“Commission”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* G. Michael Witte, Executive Secretary, responded in writing on behalf of the Commission. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that on August 2, 1999, the Commission opened an investigation concerning Cause No. 49-G06-9607-CF-97107. You allege that a five-volume transcript was released to L. Heck and that L. Heck returned the transcript to the Commission on August 11, 1999. You would like to know “why L. Heck wanted the records and what was the result of the investigation.”

In response to your formal complaint, Mr. Witte advised that I.C. § 5-14-3-4(a)(8) indicates that public records declared confidential by or under rules adopted by the Supreme Court of Indiana are confidential. Indiana Supreme Court Rule 9(G)(2)(b)(xi) excludes from public access proceedings and papers in attorney discipline matters that have not resulted in the filing of a verified complaint, as well as investigative reports and work product of Mr. Witte and employees and agency of the Commission. This same exclusion is repeated in Indiana Admission and Discipline Rule 23(22)(a). Thus, your request for investigative reports and work product of the agency was properly denied.

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 Commission 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 Commission’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).

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). I.C. § 5-14-3-4(a)(8) provides that records declared confidential by or under rules adopted by the Indiana Supreme Court may not be disclosed in response to a request. Under Administrative Rule 9(G)(b)(xi), proceedings and papers in attorney disciplinary matters that relate to matters that have not resulted in the filing of a verified complaint, investigative reports and other work product of the Executive Secretary, employees or agents of the Disciplinary Commission, statements of circumstances conditionally agreeing to discipline, and affidavits of resignation or consenting to discipline pursuant to Admission and Discipline Rules 23 are deemed confidential.

Your alleged requests of the Commission sought why L. Heck wanted records related to the Commission’s investigation into 49-G06-9607-CF-97101 and what was the result of the investigation. I would note that the APRA involves the request of records of an agency that exist; an agency is not required to create a new record in response to a request or answer questions. See *Opinions of the Public Access Counselor 08-FC-113; 10-FC-56*. Your initial request inquired as to “why L. Heck wanted records related to the Commission.” I interpret this inquiry not as a request for records, but a question as to why a party acted in a certain manner. The Commission would not be required to respond to questions submitted pursuant to the APRA. Even if the Commission maintained records responsive to your inquiry, it properly complied with the APRA in denying your request pursuant to I.C. § 5-14-3-4(a)(8) and AR 9(G)(b)(xi). Your second inquiry sought the results of the Commission’s investigation into the manner. It is my opinion that the Commission properly denied your request pursuant to I.C. § 5-14-3-4(a)(8) and Administrative Rule 9(G)(b)(xi) as the request sought investigative reports and work product of the Commission.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Commission did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: G. Michael Witte