



# STATE OF INDIANA

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February 13, 2013

Ms. Sheritha A. Patton  
3204 N. Linda Layne  
Muncie, Indiana 47303

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

Dear Ms. Patton:

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

## BACKGROUND

In your formal complaint, you provide that on December 3, 2012, you submitted a written request to the Court for an audio copy of the Post-Conviction hearing that was held for Lorenzo Reid on March 6-7, 2012. On December 5, 2012, the Court acknowledged the receipt of your request in writing. As of January 17, 2013, you have yet to receive any further correspondence from the Court or copies of the audio recordings.

In response to your formal complaint, Mr. Cross advised that copies of the discs containing audio of the Court's proceedings has now been provided to the requesting parties. Mr. Cross noted that the Court's response is admittedly delinquent due, in part, to the following factors:

- The request came at a time shortly before the holidays and when the court reporter was on vacation. The request was made directly to the Court and not through the court's designated public access representative who is identified on the county's website.
- The nature of the request required a somewhat time consuming amount of research and required consideration of I.C. § 33-37-5-1, I.C. § 33-41-1-5, Administrative Rule 9(B), prior opinions of the Public Access Counselor's Office, Indiana Judicial Center memoranda, Indiana Code of Judicial Conduct

Rule 2.17, and the *Public Access to Court Records Handbook* issued by the Indiana Supreme Court, Division of State Court Administration.

- The request had obvious implications for each of the four Wayne County courts of general jurisdiction. This required that a meeting of all four judges of the courts be convened that was somewhat difficult to schedule given the judge's and counsel's already hectic schedule and the intervening holidays.

All of the forgoing notwithstanding, Mr. Cross acknowledged that the Court's responses to the request were untimely and tardy. Mr. Cross did note that the extreme concerns expressed by each of the local judges regarding the potential disruptive impact that honoring such requests could have on the operation of the Court and upon the ability of the judges to comply with their professional obligations under the provisions of Rule 2.17 of the Code of Judicial Conduct. The Court is confident that any future requests of this nature will be better understood and more expeditiously responded to.

### 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 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). 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. Here, you submitted your written request for records on December 3, 2012 to which the Court responded in writing to acknowledge its receipt on December 5, 2012. As such, it is my opinion that the Court complied with section 9(b) of the APRA in acknowledging the receipt of your request in writing within seven (7) days of receipt.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(a) under the APRA have been met include, 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*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. 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*.

You submitted your request to the Court on December 3, 2012, to which the Court acknowledged its receipt on December 5, 2012. The Court has now provided copies of all audio from the hearings that were requested. The Court admitted in its response to your formal complaint that its response to the request was untimely and tardy. While it is my opinion that the Court acted contrary to section 3(b) of the APRA by not providing all records that were responsive to your request in a reasonable period of time, it is clear from the Court's response that such actions were not intentional and the request was unique to the Court. The Court was required to research and review the applicable rules of law that would apply to the request and ensure that its response was in full compliance. Further, as you have now been provided with a copy of all records that were requested, I trust that this is in satisfaction of your formal complaint.

#### CONCLUSION

Based on the foregoing reasons, it is my opinion that the Court acted contrary to the requirements of section 3(b) of the APRA in response to your request. However, as all recordings have now been provided, I trust that this is in satisfaction of your formal complaint.

Best regards,

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

Joseph B. Hoage  
Public Access Counselor

cc: Ronald Cross