



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 11, 2013

Mr. Lavern Baltimore
Offender #170093
Wabash Valley Correctional Facility
P.O. BOX 1111
Carlisle, IN 47838-1111

Re: Formal Complaint 13-FC-233; Alleged Violation of the Access to Public Records Act by the Floyd County Superior Court and the Floyd County Clerk

Dear Mr. Baltimore,

This advisory opinion is in response to your formal complaint alleging the Floyd County Superior Court 1, Honorable Susan L. Orth presiding, ("Court") and the Floyd County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Hon. Susan L. Orth, Judge, Floyd County Superior Court, responded on behalf of the Superior Court and the Clerk. Her response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 12, 2013.

BACKGROUND

Your complaint alleges that the Honorable Judge Susan L. Orth and the Floyd County Clerk Linda Moeller violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

You allege that a request dated July 18, 2013 was submitted to the Clerk and the Court asking for photographs associated with your criminal proceedings. Judge Orth has advised the Office of the Public Access Counselor that the Clerk and the Court are no longer the keeper of the records you seek and the Court of Appeals now is in custody of the records that you have requested. Judge Davis' response is enclosed for your review.

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 Ind. Code § 5-14-3-1. The Floyd County Superior Court and the Floyd County Clerk’s Office are public agencies for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 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.

You have not provided the original request to the Clerk or the Court with your Formal Complaint. Therefore I am unable to determine if the Court or the Clerk responded to your initial request in a timely manner. You have not raised this issue in your complaint so it is deemed moot for the purposes of this analysis. If the response was sent to you outside the time limitations pursuant to Ind. Code § 5-14-3-9(b), it is deemed denied.

In its response, provided for your review, the Court, and on behalf of the Clerk, alleges that the access was denied because you made the request upon the wrong public agency. The Court maintains that due to the appeal of the trial court judgment, the court records are now maintained at the Indiana Court of Appeals. A denial of records under the APRA is not a violation if the public agency upon which the request was made is not the custodian of the record.

The records you seek may be requested from the Indiana Court of Appeals. Please be advised that pursuant to Ind. Code § 5-14-3-9(b), et. al., the Indiana Court of Appeals may charge a fee for the cost of copying or providing electronic media to you.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor that the Floyd County Superior Court and the Floyd County Clerk did not violate the APRA in denying your request.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

cc: Hon. Susan L. Orth; Linda Moeller