



# STATE OF INDIANA

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August 27, 2013

Mr. Terrence J. Fuqua  
Wabash Valley Correctional Facility  
P.O. BOX 1111  
Carlisle, IN 47838-1111

*Re: Formal Complaint 13-FC-246; Alleged Violation of the Access to Public Records Act by the Allen County Superior Court*

Dear Mr. Fuqua,

This advisory opinion is in response to your formal complaint alleging the Allen County Superior Court 5, Honorable Wendy W. Davis presiding, ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Hon. Wendy W. Davis, Judge, Allen County Superior Court, responded on behalf of the Superior Court. 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 20, 2013. As requested in your complaint, this response is being treated with priority status.

## BACKGROUND

Your complaint alleges that the Honorable Judge Wendy Davis violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

As referenced in 13-FC-172, a request dated May 31, 2013 was submitted to the Clerk of the Allen County Superior Court asking for a number of records. You had addressed your request to "Clerk of Allen County Superior Court". In the previous opinion, the Office of the Public Access Counselor advised you that the Clerk was not the keeper of the records you sought and the Clerk's office indicated that you should be directed to the specific court in question. On July 3, 2013 you duly submitted a request to the Court for an electronic copy of the following hearings:

"Copy for Inspection, cd of the following court records, motion to suppress hearing held on March 5&6, 2012; wave jury for bench trial hearing held on May

13, 2012 and all other hearings held pertinent to cause no. 02D05-1112-FA-65; also, June 14, 2012 trial and July 17, 2012 Sentencing hearing.”

On July 11, 2013, the Hon. Wendy W. Davis, Judge Allen County Superior Court 5 responded to your request in the form of an Order of the Court denying the public access.

#### 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 Allen County Superior Court is a public agency 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.

Your letter was received by the Court on July 3, 2013. The response by the Court on July 11, 2013 was served by the Clerk on July 16, 2013. This response was sent to you outside the time limitations pursuant to Ind. Code § 5-14-3-9(b) and is deemed denied. This consideration is consequently moot due to the Court order effectively denying your request.

In its response, provided for your review, the Court 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. In the earlier opinion issued in June, it was indicated to you that the court reporter of Allen County Superior Court 5 was the custodian of the records. The Court has advised the Public Access Counselor that the statement was erroneous and that the Court no longer maintains said records. 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 Allen County Superior Court did not violate the APRA in denying your request.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

cc: Hon. Wendy W. Davis