



# STATE OF INDIANA

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September 23, 2013

Mr. Chester L. Wilms, Jr. - #943594  
New Castle Correctional Facility  
P.O. Box A  
New Castle, IN 47362

*Re: Formal Complaint 13-FC-249; Alleged Violation of the Access to Public Records Act by the Allen County Superior Court*

Dear Mr. Wilms,

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.

## BACKGROUND

Your complaint alleges 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).

On an unspecified date, you allege you requested of the Court a file-stamped certified probable cause affidavit presumably related to your criminal charges.

On July 31, 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.

While a probable cause affidavit is public record under I.C. § 5-14-3-5(a)(2), it appears from the original request to the Court the probable cause affidavit is not referenced. The request you submitted is extremely difficult to interpret, if it can be interpreted at all. A public records request must be reasonably particular I.C. § 5-14-3-3(a)(1). This does not appear to be the case from the original request you have provided with your formal complaint. If a public agency cannot determine the specific records you are seeking, they cannot be expected to produce them under the APRA.

#### 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 'LH Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

cc: Hon. Wendy W. Davis