



STATE OF INDIANA

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February 13, 2013

Mr. Ronrico J. Hatch
DOC 138169
1 Park Row St.
Michigan City, Indiana 46360

Re: Formal Complaint 13-FC-39; Alleged Violation of the Access to Public Records Act by the Allen County Superior Court

Dear Mr. Hatch:

This advisory opinion is in response to your formal complaint alleging the Allen County Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Lisbeth Borgmann, Clerk of Courts, responded on behalf of the Court. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted to the Court two separate affidavits, with a total of four copies of each affidavit. You requested that Ms. Borgman file the record in the Court's file and provide a file-stamped marked copy of each record. On January 22, 2013, you submitted a written inquiry regarding the status of your request. As of February 6, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you had yet to receive any records or response from the Court.

In response to your formal complaint, Ms. Borgman advised that the Clerk received your pleadings on January 2, 2013 and after the Court's review of the pleadings, file-stamped copies were mailed to you on January 18, 2013. Unbeknownst to the Court and after receipt of your inquiry on January 22, 2013, the post office returned the Court's original mailing. A copy of the envelope is enclosed for your reference. The original mailing was not returned to the Clerk until after January 29, 2013. On the same date the Court received your formal complaint additional copies of the date-stamped records were mailed to your updated mailing address.

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 in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 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 (emphasis added). *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. 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).

Here, the Court received your filings on January 2, 2013 and provided you with date-stamped copies on January 18, 2013. The original mailing submitted by the Court was returned by the U.S. Post Office after January 29, 2013 due to the mailing was not deliverable as addressed and the record was unable to be forwarded. Upon receipt of your formal complaint, additional copies of the date-stamped records were promptly mailed to you at the correct address. Thus, it is my opinion that the Court complied with the requirements of the APRA in response to your request and as the records have now been provided, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Lisbeth Borgmann