



STATE OF INDIANA

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November 5, 2014

Mr. David J. Stafford
41 E. Washington St., Ste. 200
Indianapolis, IN 46204

Re: Formal Complaint 14-FC-238; Alleged Violation of the Access to Public Records Act ("APRA") by the Indiana Supreme Court Disciplinary Commission

Dear Mr. Stafford,

This advisory opinion is in response to your formal complaint alleging the Supreme Court Disciplinary Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk has responded via Mr. G. Michael Witte, Executive Director. His response is attached for your review. 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 October 8, 2014.

BACKGROUND

Your complaint dated October 8, 2014, alleges the Indiana Supreme Court Disciplinary Commission violated the Access to Public Records Act by not producing requested records in violation of Ind. Code § 5-14-3-3.

On or about October 8, 2014 you were denied access to public records regarding a named individual who resigned from the practice of law after the Commission filed a verified complaint for discipline. Section 22 of the Indiana Rules for Admission to the Bar Rule 23 states: "after a verified complaint has been filed with the Court, all proceedings, except for adjudicative deliberations, and all papers filed of record with the Clerk shall be open and available to the public." You seek the dates and number of complaints against the named attorney.

The Commission responded to your formal complaint arguing the Indiana Supreme Court Rules and Section 22 of the Indiana Rules for Admission to the Bar Rule 23 prohibit disclosure of information received by the Commission before a verified complaint has been filed by the Commission. It states the Commission never filed a verified complaint against the individual.

DISCUSSION

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 Indiana Supreme Court Disciplinary Commission is a public agency for the purposes of the APRA (separation of powers notwithstanding). See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Commission’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).

Generally, records of the Commission are public records subject to disclosure; however, Section 22 of the Indiana Rules for Admission to the Bar also states “proceedings and papers that relate to matters that have not resulted in the filing of a verified complaint shall not be open and available to the public”. The Commission argues a verified complaint was never filed against the individual in question and must not be disclosed pursuant to the Rule. Note the use of the word “shall not” as indication the information is considered confidential and its release is not discretionary.

Ind. Code § 5-14-3-4(a)(8) states public records declared confidential by or under rules adopted by the supreme court of Indiana are excepted from the APRA and may not be disclosed by a public agency. The Indiana Rules of Court and the Indiana Rules for Admission to the Bar and the Discipline for Attorneys are rules adopted by the supreme court of Indiana. Furthermore, Indiana Administrative Court Rule 9(G)(2)(b)(xi) declares the following information confidential:

proceedings and papers in attorney disciplinary matters that relate to matters that have not resulted in the filing of a verified complaint, investigative reports and other work product of the Executive Secretary, employees or agents of the Disciplinary Commission, statements of circumstances conditionally agreeing to discipline, and affidavits of resignation or consenting to discipline pursuant to Admission and Discipline Rules 23

If a verified complaint was not filed, the Commission clearly must not disclose information from an investigation maintained by the agency regarding an individual.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Indiana Supreme Court Disciplinary Commission has not violated the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. G. Michael Witte