



STATE OF INDIANA

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March 13, 2014

Mr. Matthew Koesters
221 Spring St.
Jeffersonville, IN 47130

Re: Formal Complaint 14-FC-27; Alleged Violation of the Access to Public Records Act by the Clark County Circuit Court No. 2

Dear Mr. Koesters,

This advisory opinion is in response to your formal complaint alleging the Clark County Circuit Court No. 2 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Court has responded via the Honorable Judge Vicki L. Carmichael and the Honorable Judge Jerry F. Jacobi. Their responses are enclosed 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 February 12, 2014.

BACKGROUND

Your complaint dated February 12, 2014, alleges the Clark County Circuit Court No. 2 violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about January 24, 2014, you submitted a request to the Court for the following records:

- "A list of all cases pending in Circuit Court No. 2, including the case numbers, the names of defendants, and the charges those defendants face and the dates those charges are filed.
- A list of all cases awaiting jury trial, including the case numbers, the names of defendants, the charges those defendants face and the date those charges were filed. "

You were denied the records on January 24, 2014 by Judge Jacobi who stated the request was “over burdensome” and the records are available through the Courts’ online portal Odyssey.

In its response, the Court argues the APRA does not require a list of names to be created in order to satisfy the request. Furthermore, the Judges assert any creation of a list could not be compiled using the tools you describe in your complaint – the search and production of the list would take just as long, than if you created it through Odyssey. The Court also maintains the argument your request is “over burdensome”.

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 Clark County Circuit Court No. 2 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 Court’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 the request has been received and information regarding how or when the agency intends to comply.

The Indiana Judiciary is subject to public records requests as is any other public agency. As stated in Rule 9 of the Indiana Court Rules:

(D) General Access Rule.

- (1) A court record is accessible to the public except as provided in sections (G) and (H) of this rule, or as otherwise ordered sealed by the trial court.
- (2) This rule applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.

Initially, it is important to address the issue of an “over burdensome” public records request. The APRA does not set a threshold of how large or voluminous a public records request can be. Therefore, I rarely give credence to the argument a request is too burdensome for a public agency to handle. There are limited exceptions (see Opinion of the Public Access Counselor 13-INF-68), but those situations usually have extenuating

circumstances as well. More compelling in this current instance (albeit not cited by the Court) is the notion of judicial resources as is clearly stated in Court Rule 9(F)(3):

With respect to requests for case record information not excluded from public access by Sections (G) or (H) of this rule, the request for bulk distribution or compiled information may be granted upon determination that the information sought is consistent with the purposes of this rule, that resources are available to prepare the information, and that fulfilling the request is an appropriate use of public resources.

The Court has indicated the data exists in bulk, but must be mined in order to create a list of cases. The Court also argues the tools and electronic access to their own database is no more comprehensive than the public's when it comes to mining the information. If the search was as simple as you suggest, I would give less weight to the argument the search would be a burden on Court resources.

Read in tandem with the APRA at Ind. Code § 5-14-3-3(f), a Court is not obligated to create a list to satisfy a public records request. The case list you have requested is ostensibly a list of party names and therefore would apply to this situation. Additionally, your request essentially calls for enhanced access of data that is already public. Agencies, including Courts, are permitted to provide enhanced access of information, but are not obligated to do so. See Ind. Code § 5-14-3-2(f)(2) and Section 3.6. The Courts have already provided a gateway to public access through the Odyssey system. To require the Court to further manipulate the data in order to satisfy a public records request is not a condition precedent to fulfilling the APRA.

It should be noted, however, under Ind. Code § 5-14-3-3(d), a public agency which maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. It is unclear if the creation of the record would fall within reasonable efforts in this case, but if it can be done with a relative modicum of ease, it should be.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Clark County Circuit Court No. 2 did not violate the Access to Public Records Act.

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. Judge Vicki L. Carmichael; Hon. Judge Jerry F. Jacobi