



STATE OF INDIANA

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March 1, 2016

Mr. Terrence Fuqua DOC # 935124
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 16-FC-13; 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 ("Court") and Court Reporter, Ms. Jennifer Knorr violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Court has responded via Mr. John McGauley, Court Executive. His response is 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 January 28, 2016.

BACKGROUND

Your complaint dated January 24, 2016 alleges the Allen County Superior Court violated the Access to Public Records Act by failing to acknowledge your complaint.

On December 28, 2015 you requested a copy of the audio recording of a May 31, 2012 hearing before Magistrate Samuel Kierns. As of the filing of your complaint, you had not received a response.

On February 18, 2016 the Court responded via Mr. McGauley. He notes the Court did not receive your request for the audio recording. He also contends the release of a recording to you would not be permissible under court guidelines contained with Indiana Administrative Rule 10 and Rule 2.17 of the Indiana Code of Judicial Conduct, because there is no assurance you will not alter or broadcast the record.

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 Court’s disclosable 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 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 Court has stated it did not receive your request for the audio recording. A public agency is not in violation of the APRA if it did not receive your request. However, it is this office’s hope the public agency, once notified of the existence of a request, takes steps to fulfill the outstanding request.

In this case, the Court has stated it is denying your request under Indiana Administrative Rule 10 and Rule 2.17 of the Indiana Code of Judicial Conduct, due to the fact there is no assurance you will not alter or broadcast the record. This Office has long held the Rules of the Judiciary and the Access to Public Records Act can be read together consistently. When it comes to audio recordings, unless there is actual or constructive notice or a reasonable belief that a requestor intends to broadcast or alter proceedings, it should be disclosed upon request. It is my hope the Court will carefully examine its stance and proceed accordingly.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. John McGauley