



STATE OF INDIANA

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November 30, 2016

Mr. Kevin Martin #169789
Indiana State Prison
Michigan City, Indiana 46360

Re: Formal Complaint 16-FC-277; Alleged Violation of the Access to Public Records Act by St. Joseph Superior Court Judge Jeffrey L. Sanford

Dear Mr. Martin:

This advisory opinion is in response to your formal complaint alleging the Honorable Jeffrey L. Sanford, Judge for St. Joseph Superior Court ("Judge") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. Judge Sanford has responded on November 7, 2016. His response is included for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 23, 2016.

BACKGROUND

Your complaint received October 21, 2016, alleges the Judge has denied you access to the requested documents. On September 13, 2016, you requested the probable cause affidavit for your arrest warrant and for a search warrant. Included in your complaint is an acknowledgement dated September 30, 2016 from the Judge stating the Clerk of the Court is to comply with request to the extent they are able.

Judge Jeffrey L. Sanford has responded that you were sent the probable cause affidavit by the Clerk. He has inspected the Clerk's file and has not found an affidavit for a search warrant, nor was there a search warrant ever issued in your case.

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 Indiana Code § 5-14-3-1*. The St. Joseph Superior Court is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. 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 Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request is submitted and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana 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 Clerk of the Court has complied with your request which was included in your complaint. The Judge of this Court, as well as the Clerk have not found any of the additional information you have requested. They have also stated a search warrant nor was an affidavit for a search warrant ever created in your case.

A public agency does not have the burden of creating or producing a document which does not exist. My only recommendation to the Court and to the Clerk is that a written denial to a requestor be issued after a search is conducted in order to close out the document request.

CONCLUSION

Based on this information, it is the Opinion of the Indiana Public Access Counselor that the St. Joseph Superior Court has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Hon. Jeffrey L. Sanford, Judge