

March 17, 2003

Mr. Andre L. Nelson
P.O. Box 30
Pendleton, IN 46064

Re: *Advisory Opinion 03-FC-10*; ; Alleged Denial of Access to Public Records by the Lake County Superior Courts Grand Jury Commissioner and Court Administrator.

Dear Mr. Nelson:

This is in response to your formal complaint, which was received on March 4, 2003. You have alleged that the Lake Superior Courts' Grand Jury Commissioner, through the Court Administrator's Office, ("Court Administrator's Office") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Court Administrator's Office denied you access in violation of the APRA in response to your February 11, 2003 request for copies of grand jury transcripts. Mr. Martin Goldman, the Jury Commissioner and Court Administrator, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Court Administrator's Office did not deny you access to public records in violation of the APRA because records of grand jury proceedings are restricted from disclosure under Indiana Code section 35-34-2-10.

BACKGROUND

According to your complaint, you made a public records request dated February 11, 2003 to the Lake Superior Courts Grand Jury Commissioner for a copy of "grand jury proceedings for the 2nd quarter, 1992 term, June 11, 2:48 p.m." In a letter dated February 14, 2003, Mr. Goldman advised you that under Indiana Code section 35-34-2-10, he could not disclose the records of the proceedings to you. You then filed your formal complaint to this Office.

In his response to your formal complaint, Mr. Goldman reiterated that since the records of the grand jury proceedings are not disclosable to you under Indiana Code section 35-34-2-10, his response to your public records request of February 11th was appropriate under the APRA.

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." Ind. Code § 5-14-3-1. The Court Administrator's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of this public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

By way of a public records request, you sought access to records of particular grand jury proceedings. Grand jury proceedings are, by statute, secret and disclosure of information from these proceedings is prohibited except under limited circumstances. Ind. Code §35-34-2-4(i). While public records are generally open for public inspection or copying, there may be statutes that restrict access to such public records as contemplated under Indiana Code section 5-14-3-4. In the case of records of grand jury proceedings, there is such a statute. Indiana Code section 35-34-2-10 provides that:

- a. Except when required to do so by law, a person who has been present at a grand jury proceeding and who knowingly or intentionally discloses
 1. any evidence or testimony given or produced;
 2. what a grand juror said; or
 3. the vote of any grand juror;to any other person, except to a person who was also present or entitled to be present at that proceeding or to the prosecuting attorney or his representative, commits unauthorized disclosure of grand jury information, a Class B misdemeanor.
- b. The transcript of testimony of a witness before a grand jury may be produced only:
 1. for the official use of the prosecuting attorney; or
 2. upon order of:
 - A. the court which impaneled the grand jury;
 - B. the court trying a case upon an indictment of the grand jury; or
 - C. a court trying a prosecution for perjury;but only after a showing of particularized need for the transcript

This statute provides, therefore, that the Court Administrator's Office is not authorized to disclose to you records of grand jury proceedings.

You referenced a court case in your complaint, *Hinojosa v. State*, 781 N.E.2d 677 (2003) as authority for the proposition that you must be provided copies of the records of the grand jury proceedings that you requested from the Court Administrator's Office. In *Hinojosa*, a police officer was seeking access to grand jury transcripts because he intended to use them as evidence in a disciplinary action brought against him by his department. *Hinojosa* at 679. The Indiana Supreme Court's decision in this case focused on the "particularized need" requirement of Indiana Code section 35-34-2-10(b) and directed the trial court to determine whether or not the police

officer could demonstrate that need in order to have grand jury transcripts released to him. This decision does not provide any support for your claim that the Court Administrator's Office violated the APRA by failing to provide records of grand jury proceedings to you.

For the reasons cited above, it is my opinion that the Court Administrator's Office did not violate the APRA with respect to your February 11, 2003 request for access to records of grand jury proceedings.

CONCLUSION

It is my opinion that the Lake Superior Court Grand Jury Commissioner and Court Administrator did not violate the APRA by denying you access to records of grand jury proceedings because access to these public records is restricted under Indiana Code section 35-34-2-10.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Martin Goldman, Court Administrator/Jury Commissioner