



STATE OF INDIANA

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December 8, 2008

Daryl Walker
DOC #172966
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 08-FC-234; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court Five

Dear Mr. Walker:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court Five ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Court's response to the complaint is enclosed for your reference. It is my opinion the Court has not violated the APRA.

BACKGROUND

You allege that the Court violated the APRA by denying you access to records you requested on October 14, 2008. You mailed this complaint on November 5, and my office received it on November 7.

The Court responded to the complaint by letter dated November 12 from Judge Grant Hawkins. Judge Hawkins contends you did not request the records pursuant to the APRA but instead filed two motions with the Court, both of which were denied. Further, Judge Hawkins contends that you have requested records which do not exist. Finally, Judge Hawkins contends that your complaint is moot because you have requested the assistance of the Public Defender of Indiana who will be requesting creation of the documents you have requested.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Court is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). As such, any person has the right to inspect and copy the public records of the

Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable. I.C. § 5-14-3-3(a).

The APRA provides the right to inspect and copy records of a public agency. It is separate and distinct from the discovery process and from any other court proceedings. The Court contends you did not request records through the APRA but instead filed motions with the Court. While the APRA does not require a requester to specifically invoke the APRA, it is my opinion that here you requested records not pursuant to the APRA but instead through means outside the scope of the APRA. As such, the matter is outside the purview of this office.

Further, even if your request had been made pursuant to the APRA, the Court contends the records you have requested to not exist. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

CONCLUSION

For the foregoing reasons, it is my opinion the Court has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Judge Grant W. Hawkins, Marion Superior Court