



STATE OF INDIANA

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July 14, 2014

Mr. Steven M. Kirsch
2930 E. 96th St.
Indianapolis, IN 46240

Re: Informal Inquiry 14-INF-21; Adoption Records

Dear Mr. Kirsch:

This is in response to your informal inquiry regarding adoption records maintained by court clerks. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1, Ind. Code § 31-19-19 et. al. and the Indiana Administrative Court Rules.

BACKGROUND

You have requested my interpretation of the various statutes relating to adoption records and who may have access to them. Your concern is that the General Assembly has worded the adoption record statutes in a manner which may be inconsistent with the public policy of transparency and the Administrative Court Rules.

Administrative Court Rule 9(B) allows public access to court records generally and grants greater access to parties to a case and the attorneys representing them. Adoption records, however, are declared confidential and not open to public inspection specifically under Ind. Code § 31-19-19-1 & 4. It does not distinguish between public inspection and access to records by the parties or their lawyers. Administrative Court Rule 9(G) excludes from public access all adoption records declared confidential by Ind. Code § 31-19-19-1. Your belief is that attorneys to the case should have access to these records, but the parties may not.

DISCUSSION

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. Indiana Courts are public agencies 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 courts' non-confidential public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

While Ind. Code § 31-19-19-1 & -4 declares adoption records confidential, Indiana Administrative Court Rule 9 provides additional guidance for the disclosure of court records. Administrative Court Rule 9(B)(1) provides that "All persons have access to court records as provided in this rule, except as provided in section (B)(2) of this rule." Rule 9(B)(2) provides that "[t]he following persons, in accordance with their functions within the judicial system, may have greater access to court records ... (d) the parties to a case or their lawyers with respect to their own case." However, Rule 9(G)(1)(b) confirms the confidentiality of adoption case records, prohibiting them from public access.

The intention of Rule 9(G)(1) with regards to disclosure of confidential records is unclear. Unlike Ind. Code § 31-19-19-1 & -4, Rule 9(G)(1) does not set out instances for when disclosure is permissible¹. All adoption records are maintained by the local court with probate jurisdiction. *See* generally Ind. Code § 31-19-2 et. al. Indiana attorneys of course are considered to be officers of the court. *See* Ind. Code § 33-43-1-1. Furthermore, the legislature contemplated identifying adoptions records to be in the custody of attorneys and has prohibited attorneys (and courts) from releasing this information without consent – even to their own clients. *See* Ind. Code § 31-19-22-2. Read together, these statutes can be reasonably construed to allow access to the attorneys of record in an adoption case.

Notwithstanding Administrative Court Rule 9(B)(2), parties to a case are not officers of the court, and would not have the same unfettered access to adoption records. Attorneys rely on access to court records to represent their clients and litigate adoption cases. Parties do not require such access and therefore it stands to reason access is limited to their attorneys (pro se adoption litigants would presumably need to petition the court for release). Their lawyers are also bound by Ind. Code § 31-19-22-2 to keep identifying information confidential. Public inspection and inspection by attorneys is mutually exclusive and the standards of confidentiality differ.

It is my opinion that attorneys of record are an extension of the court and have access to adoption records and are therefore bound by the same confidentiality requirements as the court itself. Parties do not have the same access to adoption records as is afforded to their lawyers.

Please do not hesitate to contact me with any further questions.

¹ Various releases and consents are authorized throughout Ind. Code § 31-19 et. seq.

Best regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor