



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 27, 2010

Mr. Marquis D. Shipp
DOC# 963441
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 10-FC-298; Alleged Violation of the Access to Public Records Act by Marion County Superior Court 20

Dear Mr. Shipp:

This advisory opinion is in response to your formal complaint alleging Marion County Superior Court 20 (the "Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Court, but as of today we have not yet received a response.

BACKGROUND

According to your complaint, on November 4, 2010, you requested transcripts of a hearing held on May 27, 2005. As of November 18th, you had not yet received a response to your request.

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 is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Court's public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §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. I.C. §5-14-3-9(b).

If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Thus, if the Court failed to respond to your request within seven days of receiving it, the APRA deems your request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Consequently, the Court's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the Court, it is unclear to me why your request was denied. Under section 4 of the APRA, a public agency may not disclose records declared confidential by or under rules adopted by the supreme court of Indiana. I.C. § 5-14-3-4(a)(8). Confidentiality of court records is governed chiefly by Administrative Rule 9, which was adopted by the Indiana Supreme Court. The rule applies to court records, which is defined as both case records and administrative records. Admin. R. 9(C)(1). "Case record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case. Admin. R. 9(C)(2). All persons have access to court records as provided in Administrative Rule 9. Admin. R. 9(B)(1). However, some case records are confidential, pursuant to Administrative Rule 9(G).

Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Court has not provided a justification for withholding the records at issue here, it is my opinion that the Court has failed to sustain its burden.

If the Court cannot justify withholding the records under the APRA, I encourage the Court to release the records to you as soon as possible. To the extent the Court persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Court to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

Finally, I note that the APRA permits a public agency to require a requester to pay any applicable copy fees prior to releasing the records. I.C. § 5-14-3-8(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if the Court failed to respond to your request within seven days in accordance with section 9 of the APRA, the Court violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Joy Patton