



STATE OF INDIANA

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March 17, 2010

Mr. Brent Westerfeld
P.O. Box 30379
6202 North College Ave.
Indianapolis, IN 46230-0379

Re: Formal Complaint 10-FC-38; Alleged Violation of the Access to Public Records Act by Madison Superior Court No. 5

Dear Mr. Westerfeld:

This advisory opinion is in response to your formal complaint alleging that the Madison Superior Court No. 5 ("Court") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The Court's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on February 11, 2010, you personally requested to inspect a closed criminal case file maintained by the Court. You informed the Court staffer that you were an attorney and that you wanted to look at the file because the criminal defendant in that case is also a witness in one of your pending cases. The staffer advised you that you would need to speak to the judge. You informed the staffer that you did not want to inspect any confidential portions of the file, but the staffer insisted that they could not let you inspect any of the file. You then appeared before Judge Thomas Clem, who asked you what portions of the file you wished to have copied. You were never permitted to inspect the file because Judge Clem informed you that possible identifying information in the non-confidential sections could not be released, citing Administrative Rule 9 as the basis of his position.

In response to your complaint, Judge Clem states that he was in court at the time you made your request and that his staff instructed you to wait until he concluded his courtroom obligations so that he could analyze your request. Judge Clem then met with you, reviewed the file you requested, and told you that you could have access to the file once certain confidential information like social security numbers was redacted. Judge Clem states that he asked you what you wanted, you informed him, and his staff made the

relevant copies for you. The reason he did not let you inspect the file was due to the commingling of the confidential information with the non-confidential information.

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 does not dispute that it is a public agency subject to the APRA. I.C. § 5-14-3-2(m). 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. Here, the Court responded to your in-person request the same day in accordance with the APRA.

There are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c).

The APRA *requires* public agencies to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a). The APRA also declares confidential a social security number contained in the records of an agency. I.C. § 5-14-3-4(a)(12). Thus, it the Court did not violate the APRA by denying your request to inspect the records so that the Court could redact confidential information therein. In fact, the Court was acting in compliance with the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate 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 prominent, sweeping flourish at the end of the name.

Andrew J. Kossack
Public Access Counselor

Cc: Judge Thomas L. Clem