



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 2, 2013

Cleverly P. Lockhart
DOC 895563
3038 W. 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 12-FC-365; Alleged Violation of the Access to Public Records Act by the Howard County Circuit Court

Dear Mr. Lockhart:

This advisory opinion is in response to your formal complaint alleging the Howard County Circuit Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Kim Wilson, Clerk of the Howard County Circuit and Superior Court, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you mailed a written request for records to the Court on December 4, 2012. As of December 27, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Court.

In response to your formal complaint, Ms. Wilson advised that the Court does not have a record of receiving your request. Regardless, the Court has now forwarded copies of all records that were responsive to your request on December 31, 2012 via certified U.S. Mail.

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." *See* I.C. § 5-14-3-1. The Court is a public agency for the purposes of the APRA. *See* 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 records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The Court maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Court received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See I.C. § 5-14-3-9(b)*. A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See I.C. §5-14-3-9(c)*. Accordingly, if the Court did not receive your request, it was not obligated to respond to it. As the Court has now submitted to you via certified U.S. Mail all records that are responsive to your request, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with a large initial "J" and a distinct "H" and "oage" following.

Joseph B. Hoage
Public Access Counselor

cc: Kim Wilson