



STATE OF INDIANA

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October 9, 2013

Mr. Carl Wilson #171907
Miami Correctional Facility
3038 West 850 South
Bunker Hill, IN 46914

Re: Formal Complaint 13-FC-263; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court

Dear Mr. Wilson,

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court, ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Andrea Brandes Newsom, responded on behalf of the Court. Her response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 9, 2013.

BACKGROUND

Your complaint alleges the Marion County Superior Court violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b). You allege that on or about August 2, 2013, you made a third request for records upon the Marion County Court for various documents related to your criminal case. You claim you were refused access when Magistrate Michael S. Jenson timely granted your request for a copy of the Chronological Case Summary on August 2, 2013. Your request specifically asked for the following:

"I need the arresting officers on my case on September 29, 2010 and any other information you have on that case and or cause number 49G20-1011-FB-084509 Case No: 10084509. This case was in Court Rm: 14 but was dismissed and re-filed in Court Rm. 20."

You claim the Chronological Case Summary did not satisfy your request. Responding to your request, Ms. Newsom advised the Public Access Counselor that the Court determined your request to be vague and not "reasonably particular" under Ind. Code § 5-

14-3-3(a)(1). Additionally, the Court was unable to locate any records responsive 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.” See Ind. Code § 5-14-3-1. The Marion County Superior Court is a public agency 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 Agency’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

In its response, provided for your review, the Court alleges the access was denied, because you failed to specify the records you sought with reasonable particularity. Ind. Code § 5-14-3-3(a)(1) states that the records request must be made with reasonable particularity. The Public Access Counselor is not a finder of fact and cannot determine with accuracy whether the Court is correct in determining the request was too vague for them to respond. That being said, the following is speculation as to the reasonable particularity of the request.

In regard to the request for the arresting officers, the Court maintains the request fails to specify the particular records sought. Judging by your request for the arresting officers on your arrest, it would seem the request is relatively clear if you were simply asking for the names of the officers. Presumably, this request satisfies the reasonable particularity standard.

As to the remainder of the request, the specificity of the request would depend on the size of your file and the amount of redacting the Court would need to do in order to release the file if it contained confidential information. Instead, the Court offered the Chronological Case Summary to you. Consequently, the Court claims they were unable to locate any records responsive to your request.

It is the philosophy of this Public Access Counselor that the public agencies claiming a lack of reasonable particularity, communicate with the requestor the inability to respond to the request due to vagueness. This is not required by the APRA; however, it is a sound

policy to further transparency and theoretically should appease the requestor assuring them the public agency has determined the request is vague.

While it can be reasonably argued the information regarding your case file could be determined to be vague and ambiguous, the names of the arresting officers are public record under Ind. Code § 5-14-3-5(a)(3)(b).

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Marion County Superior Court failed to provide the names of the arresting officers in violation of the APRA. The Court did not violate the APRA as to the remainder of your request. It should be noted the response filed by Ms. Newsom has extended the invitation to submit another request stating with specificity the records you need. I trust this is a satisfactory response.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

cc: Andrea Brandes Newsom, Hon. Judge Steven Eichholtz