

January 13, 2005

Sent Via Facsimile
Sean F. Driscoll
610 S. Adams Street
Marion, IN 46952

Re: Formal Complaint 04-FC-227; Alleged Violation of the Access to Public Records Act by the Madison County Court, Division II

Dear Mr. Driscoll:

This is in response to your formal complaint alleging that the Madison County Court (“Court”) violated the Access to Public Records Act by failing to give you records in a timely manner. I find that the Court did not violate the Access to Public Records Act (“APRA”).

BACKGROUND

On December 10, you allege that you entered the office of Madison County Court Judge Thomas I. Clem to request court records in a criminal case. You recounted the conversation that took place between you and court staff. Staff expressed to you that the judge was protective about the court’s records, and had his rules concerning release of records to just any member of the public. Upon the staff’s suggestion, you waited in the judge’s courtroom for his return to speak to him about your record request. When the judge returned, he commenced court without speaking to you or indicating when he would speak to you. You then left the court and obtained the records from the county prosecutor’s office without incident.

Upon your filing this complaint, which we received on December 14, 2004, I faxed a copy to the court. Judge Clem’s written response to the complaint is enclosed for your reference. In his response, Judge Clem stated that his staff told you that the judge had to review the file before disclosing it to you. The staff advised you of the judge’s policy that he review the file prior to disclosure because of the provisions of Administrative Rule 9, which makes confidential certain records contained in criminal files. Because you had not scheduled an appointment prior to your visit, the judge could not accommodate your request immediately because of the court session.

ANALYSIS

Any person may inspect and copy the public records of a public agency unless the record is excepted from disclosure under section 4 of APRA. Ind.Code 5-14-3-3(a). The court is a public agency, because it exercises the judicial power of the state. IC 5-14-3-2. One of the exceptions to disclosure is for records declared confidential by or under rules adopted by the supreme court of Indiana. IC 5-14-3-4(a)(8). The supreme court has adopted Administrative Rule 9, amended effective January 1, 2005. Administrative Rule 9 concerns confidentiality of case and administrative records of courts. Among the information declared confidential in case records are medical, mental health, or tax records; social security numbers; and addresses, phone numbers, dates of birth, and other information which tend to identify persons who are witnesses or victims in criminal proceedings. Ind. Admin. R. 9(G)(1)(b), (d) and (e). Nevertheless, the general rule is that all persons, including members of the public and the media, have access to court records, subject to the specific exceptions. Ind. Admin. R. 9(B).

Pursuant to the Access to Public Records Act, agencies are required to respond to requests for records within certain timeframes. When a person requests a record in person, a denial occurs when twenty-four hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made. IC 5-14-3-9(a). My office has interpreted this provision to allow an agency to respond within 24 business hours of a request. A response may be provided when the agency indicates whether and how it intends to comply with the request for records. For example, the agency may indicate whether the records must be examined for confidential information and how and when that procedure will take place.

The APRA does not contain any provision regarding the time within which the agency must produce the record. Factors such as the location of the records, how voluminous the records are, and whether the agency must examine the records to redact confidential portions may impact how quickly an agency can produce a record. Hence, absence of a specific time for production in the APRA appears to recognize the various factors that must be taken into account in determining whether an agency's production of the record is reasonable.

There appears to be a dispute regarding what the staff told you in regard to the criminal case record. You allege that the staff told you that the judge was protective of records, had his rules, and did not allow access to members of the public as a whole. The court has stated that staff advised you that before you could review the file, the judge had to review it first. In the absence of any other explanation as to the intention of the court, you may have believed you were denied the record. When records are disclosable, but an agency must undertake a procedure to ensure that the records are completely free of nondisclosable material, or when other matters must take precedence over production of the record, I always advise agencies to indicate clearly that disclosure will take place once review is completed, and the estimated time in which disclosure will occur. In the absence of such a message, some members of the public will believe a denial has occurred when none was intended.

I do not believe that the court violated the Access to Public Records Act when it told you that the judge would have to review the court case file to determine whether some of the file was

confidential and could not be disclosed. Also, the court was not required to immediately process your request and produce the record for inspection, because the APRA does not require an agency to produce a record immediately, in most situations.

CONCLUSION

For the foregoing reasons, I find that the Madison County Court, Division II did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Judge Thomas I. Clem