

January 19, 2005

Keith Ware
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 04-FC-232; Alleged Violation of the Access to Public Records Act by the Superior Court of Lake County Jury Commissioner

Dear Mr. Ware:

This is in response to your formal complaint alleging that the Superior Court of Lake County Jury Commissioner violated the Access to Public Records Act by not responding to your request for a record concerning a grand juror. I do not find that the Lake County Jury Commissioner violated the Access to Public Records Act.

BACKGROUND

Your November 29 written request to the Lake County Jury Commissioner (“Commissioner”) was for “the name of the grand jury foreman that headed the grand jury in which the attached indictment was returned, in cause no. CR174-829.” In your formal complaint, filed December 20, 2004, you claim that the Commissioner did not respond to your request.

I sent a copy of your complaint to the Commissioner. Mr. Martin Goldman, Court Administrator and Jury Commissioner responded in a letter, which I enclose for your reference. In the letter, Mr. Goldman states that he “does not recall the initial request.” He also enclosed a letter that he wrote to you on December 22 that stated the basis for nondisclosure of the name of the grand jury foreman.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency’s regular business hours, except as provided for in section 4 of the Access to Public Records Act. IC 5-14-3-3(a). Section 4 contains eleven categories of records that are confidential under APRA and may not be disclosed by a public agency. IC 5-14-3-4(a)(1) excepts from disclosure those records declared confidential by state statute. Under IC 35-34-2-4, grand jury proceedings are secret. IC 35-42-2-4(i) states:

i) Grand jury proceedings shall be secret, and no person present during a grand jury proceeding may, except in the lawful discharge of his duties or upon written order of the court impaneling the grand jury or the court trying the case on indictment presented by the grand jury, disclose: (1) the nature or substance of any grand jury testimony; or (2) any decision, result, **or other matter attending the grand jury proceeding.**

IC 35-42-2-4(i), emphasis supplied.

Also, IC 5-14-3-4(a)(8) excepts from disclosure records declared confidential by or under rules adopted by the supreme court of Indiana. Under Jury Rule 10, personal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel. *See also* Ind.Admin.R.9(G)(1)(b)(v).

Therefore, your request for the name of the grand jury foreman was properly denied by the Lake County Jury Commissioner.

Your complaint alleges that the Lake County Commissioner did not respond to your request for this information. The Lake County Commissioner has responded to this allegation by stating that he does not recall your initial request. This implies that perhaps your request was not received, and if that is the case, there would be no violation of APRA to not respond to a request that was not received. You have not supplied me with documentation of mailing showing that the envelope was properly addressed and postage affixed. However, I note that if the Commissioner had received your request, the Commissioner was required to respond in writing, within seven days of receiving your mailed letter, as required by IC 5-14-3-9(b). Any denial should have been in writing, and 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. IC 5-14-3-9(c).

With the information that I have received, I do not find any violation of APRA as you have alleged.

CONCLUSION

For the foregoing reasons, I do not find a violation of the Access to Public Records Act by the Lake County Superior Court Jury Commissioner.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Martin Goldman