



STATE OF INDIANA

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August 16, 2013

Mr. Dominic Smallwood
DOC 108417
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 13-FC-226; Alleged Violation of the Access to Public Records Act by the St. Joseph Circuit Court

Dear Mr. Smallwood:

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

BACKGROUND

In your formal complaint you provide that you submitted a written request for records to the Court on or about June 10, 2013. As of August 2, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that the Court has failed to respond to your request in any fashion.

In response to your formal complaint, Ms. Rethlake advised that the Court has no record of receiving your request. Regardless, the Court has now copied and mailed to you the entire public contents of your criminal file, along with a copy of the Chronological Case Summary ("CCS"). Ms. Rethlake noted that there is no CCS entry regarding a Motion of Discovery, nor is there a Motion for Discovery maintained in the file.

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 your request. 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). If the Court received your request and did not respond to it within these timeframes, the Court acted contrary to the APRA. However, if the Court did not receive your request, it was not obligated to respond to them. Regardless, Ms. Rethlake has now advised that a copy of the entire public contents of your criminal file have been forwarded to you, along with the CCS. I trust this to be in satisfaction of your formal complaint.

CONCLUSION

Based on the foregoing reasons, it is my opinion 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 stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Terri J. Rethlake