



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Clerk South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 28, 2009

Fred Peters
DOC #26498
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 09-FC-117; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion Superior Court, Criminal Division Room Two

Dear Mr. Peters:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Marion Superior Court, Criminal Division Room Two ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Court's response to the complaint is enclosed. In my opinion the Court did not violate the APRA.

BACKGROUND

You filed a complaint with this office, postmarked on May 4, 2009 and received by my office on May 5, wherein you allege that the Court has denied you access to copies of a number of motions filed by the Defendant in the matter at issue. You indicate that you are seeking copies of the records on behalf of the Defendant, Johnny Viverette.

The Court responded to the complaint by letter dated May 12 from Judge Robert Altice, Jr. Judge Altice explains that a copy of each motion has been returned to Mr. Viverette. Further, Judge Altice indicates that following the Defendant's Notice of Appeal file-stamped April 28, the Court ordered the Clerk to prepare a record from March 3 to the present and to provide the Defendant with a copy of the completed record. Per the Court's order, the record was to be prepared and filed by May 27.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Court is clearly a public agency for the purposes of the APRA. I.C. § 5-14-

3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

If:

- (1) a person is entitled to a copy of a public record under this chapter; and
- (2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the record; the agency must provide *at least one copy* of the public record to the person . . .

I.C. § 5-14-3-8(e), *emphasis added*.

You allege that you, requesting copies on behalf of the Defendant, have been denied access to the requested records. The Court contends it has provided the Defendant with copies of the filed motions. Further, the Court has indicated that, pursuant to the Court's Order, a copy of the completed record will be sent to the Defendant on or about May 27. The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). If the Court has provided the Defendant one copy of the requested records, the office has not violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Court has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Judge Robert Altice, Jr., Marion Superior Court, Criminal Division Room Two