

September 27, 2004

Larriante J. Sumbry  
P.O. Box 41  
Michigan City, IN 46360

*Re: Formal Complaint 04-FC-153; Alleged Violation of the Access to Public Records Act by the Indiana Supreme Court*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Indiana Supreme Court (“Court”) violated the Access to Public Records Act by denying you access to certain records.

#### BACKGROUND

By letter dated July 27, 2004, you requested certain records of Lilia G. Judson, Executive Director of the Division of State Court Administration. Specifically, you requested:

- A copy of the Supreme Court Handbook
- A copy of the complaint against the Honorable Joan Kouros
- A copy of the subject matter list
- A copy of the training manual “Legal Advice versus Legal Information”
- Information for obtaining pro bono attorneys
- Legal Services and Bar Association Attorneys
- Legal Advice Manual/Pro-Se Packets
- Designated Trial Court Pro-Se Project Coordinator, Lake County
- Advisory Opinion #1-97

On August 4, 2004, Mr. Ronnie L. Miller, Director, Trial Court Management, responded to you on behalf of the Court. He advised you that the Court would allow you to inspect the Supreme Court Handbook during normal business hours, but would not make photocopies available by mail. He also stated that the complaint against Judge Joan Kouros, the “information for pro-bono attorneys,” and the list of Legal Services and Bar Association attorneys are not records maintained by the Court. In addition, he stated that he cannot determine what a “subject

matter list” is, but does not believe it is a record maintained by the Court. He further advised you that there is no designated trial court pro-se project coordinator. Finally, he advised you that the training manual “Legal Advice versus Legal Information” and the Legal Advice Manual/Pro-Se Packet would be made available to you upon receipt of payment for the copies of those documents, and he told you what the fee would be. August 4 was not the first time that Mr. Miller has advised you that these records are available; he also advised you of the availability of the records in his February 27, 2004 response to an earlier request you had made. Mr. Miller did not address your request for “Advisory Opinion #1-97 in his August 4, 2004 response to you.

You filed a formal complaint, which was received by this office on August 27, 2004. Your complaint did not specify what part of the Court’s response you found lacking. Nevertheless, I forwarded a copy of your complaint to the Court, and Mr. Miller responded on its behalf. A copy of his response is enclosed for your reference. In his written complaint response, Mr. Miller essentially restated his August 4 response, with an additional note that he was mailing you the Judicial Qualification Advisory Opinion #1-97, which he had been unable to discern in your handwritten request as a discrete request from the “Designated Trial Court Pro-Se Project.”

#### ANALYSIS

As an agency exercising the judicial power of the state, the Indiana Supreme Court is a public agency for purposes of the APRA. I.C. §5-14-3-2. Therefore, pursuant to the Access to Public Records Act, any person may inspect and copy the public records of the Court. I.C. §5-14-3-3(a). If a person is entitled to a copy of a public record, and the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record, the public agency must provide at least one (1) copy of the public record to the person. I.C. §5-14-3-8(e).

Again, your complaint does not specify which of the Court’s responses you believe was a denial of access under APRA. To the extent that your July 27 request meant to include a request for copies of documents, including the Supreme Court Employee Handbook, Mr. Miller’s response that the Court did not provide photocopies of the Employee Handbook by mail was a denial of your right to a copy of a public record under IC 5-14-3-8(e), because IC 5-14-3-8(e) appears to require an agency with the means to make a copy to provide one to a person upon request. I would suggest that if you are requesting copies of the employee handbook, or a portion of the employee handbook, you contact the Office of State Court Administration to request information regarding the cost of copying the handbook.

In his August 4 response to you, Mr. Miller advised you that the complaint against Judge Joan Kouros, the “information for pro-bono attorneys,” the list of Legal Services and Bar Association attorneys, and the “subject matter list,” copies of which you seek in your request for copies of public documents, are not maintained by the Court. Furthermore, he advised you that there is no designated trial court pro-se project coordinator for Lake County. Mr. Miller’s response advising you that the Court does not maintain some of the records you requested fulfilled his response requirements pursuant to the APRA. The Court’s failure to provide records to you that it does not maintain is not a violation of the Access to Public Records Act. Even so, Mr. Miller “went the extra mile” with respect to your complaint by forwarding you a contact

page from the Pro Bono Commission, providing you a copy of the address of the agency from which you could request a copy of the complaint against Judge Kouros, and by sending you a copy of the Lake County legal service agencies.

Mr. Miller advised you on August 4 and on February 27, 2004 that the training manual “Legal Advice versus Legal Information” and the Legal Advice Manual/Pro-Se Packet would be made available to you upon receipt of payment for the copies of those documents. IC §5-14-3-8 governs fees generally, and permits state agencies and other public agencies to charge a copy fee for copies of documents. The Access to Public Records Act states, and this office had held, that a public agency may collect a copy fee in advance of production. I.C. §5-14-3-8(e). See also *Opinion of the Public Access Counselor* 03-FC-133, written as a result of a formal complaint you submitted on December 1, 2003. Therefore, the Court is entitled to withhold the copies you request pending receipt of your payment for those records.

Mr. Miller also states that your request with respect to “advisory opinion #1-97” was so vague and difficult to read that he did not realize it was a separate request. Once Mr. Miller realized that your request for “advisory opinion #1-97” was for Judicial Qualifications Advisory Opinion #1-97, and not a part of your request for the “designated trial court pro-se project coordinator,” he forwarded a copy of that opinion to you. I find no violation of the Access to Public Records Act with respect to the delay in sending you a copy of Judicial Qualifications Advisory Opinion #1-97, since the Court did not deny you a record when it was unable to read your handwritten request for documents.

#### CONCLUSION

For the foregoing reasons, I find that the Court did not violate the Access to Public Records Act with respect to its response and production of documents contained in its August 4 response to your July 27, 2004 request, with the exception that, to the extent you were seeking a copy of the Employee Handbook, the Court should have advised you that the Employee Handbook would be made available for copying under IC 5-14-3-8(e), and advised you of any prevailing fee.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Ronnie L. Miller