



STATE OF INDIANA

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June 15, 2011

Mr. Robert L. Cornelius
4490 West Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 11-FC-119; Alleged Violation of the Access to Public Records Act by the Marion Superior Court - Criminal Division Room 4

Dear Mr. Cornelius:

This advisory opinion is in response to your formal complaint alleging the Marion Superior Court - Criminal Division Room 4 (the "Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Court's response from City of Indianapolis Assistant Corporation Counsel Mark A. Mertz is enclosed for your reference.

BACKGROUND

You allege in your complaint that the Court violated the APRA by denying your request for "preparation and delivery of transcripts" in a certain case.

In response to your complaint, Mr. Mertz argues, as a preliminary matter, that the Court's ruling denying your request should not be second-guessed by the public access counselor because the Indiana Rules of Court govern the disposition of requests such as the one at issue here. Moreover, the Court did not violate the APRA because it did not deny a request from you to inspect or copy any records; rather, your request was for "preparation and delivery" of transcripts that the Court was not obligated by the APRA to create.

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 a public agency for the purposes of the APRA. 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. I.C. § 5-14-3-3(a).

Under the APRA, “[a] request for *inspection or copying* must: (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.” I.C. § 5-14-3-3(a) (emphasis added). Here, Mr. Mertz argues that the Court was under no obligation to comply with your request because you specifically requested the “preparation and delivery” of transcripts rather than the opportunity to inspect and copy such transcripts. Moreover, he avers that the APRA does not require public agencies to create records to satisfy a request. I agree. *See Opinion of the Public Access Counselor 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”). As such, the Court did not violate the APRA by denying your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Mark A. Mertz