



STATE OF INDIANA

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July 6, 2011

Mr. Rocky M. Shroyer
DOC#: 956193
4490 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 11-FC-137; Alleged Violation of the Access to Public Records Act by the Dearborn County Circuit Court

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Dearborn County Circuit Court ("Court") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Dearborn County Clerk's ("Clerk") office, which you named as the official responsible for the denial of your request, on June 6, 2011, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that on April 25, 2011, you served a records request upon the Clerk. In the request, you asked for a copy of a probable cause affidavit. As of May 30th, you had not received a response from the Clerk or the Court.

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" under 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 public records are excepted from disclosure under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Thus, if the Court failed to respond to your mailed request within seven days of receiving it, the APRA deems your request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must 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. I.C. § 5-14-3-9(c). Consequently, the Court's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the CCPD, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Court has not provided a justification for withholding the records at issue here, it is my opinion that the Court has failed to sustain its burden.

If the Court cannot justify withholding the records under the APRA, I encourage the Court to release the records to you as soon as possible. To the extent the Court persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Court is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if the Court failed to respond to your April 25, 2011, request, the Court violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Hon. Phil Weaver