



STATE OF INDIANA

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November 28, 2011

Mr. Rocky M. Shroyer
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 11-FC-273; Alleged Violation of the Access to Public Records Act by the Delaware Circuit Court.

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Delaware Circuit Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Court, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that you submitted a request in writing on October 17, 2011 to the Court for a copy of the Affidavit of Probable Cause filed under Cause No. 18-C02-0806-FA-0003, State of Indiana vs. Jeffery Sloan. On August 19, 2011, the Court denied your request in writing and provided that it would not disclose the record to you without a court order.

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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). 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 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. *See* I.C. § 5-14-3-9(c). 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. Here, the Court responded to your written request within seven days of its receipt.

In denying your request, the Court advised that it would not provide you with copies of the requested records without a court order. The Court's denial merely stated that your request was denied in accordance with the judge's order, but it is unclear on what basis the judge made that decision. Because the Court's denial failed to cite to a statutory basis for withholding the record you requested, the Court did not comply with subsection 9(c) of the APRA. Consequently, it is my opinion that the Court has not yet sustained its burden to show that the record you requested is exempt from disclosure.

I note that under section 4 of the APRA, a public agency may not disclose records declared confidential by or under rules adopted by the supreme court of Indiana. I.C. § 5-14-3-4(a)(8). Confidentiality of court records is governed chiefly by Administrative Rule 9, which was adopted by the Indiana Supreme Court. The rule applies to court records, which is defined as both case records and administrative records. Admin. R. 9(C)(1). "Case record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case. Admin. R. 9(C)(2). All persons have access to court records as provided in Administrative Rule 9. Admin. R. 9(B)(1). However, some case records are confidential, pursuant to Administrative Rule 9(G). Administrative Rule 9 deems confidential information excluded from public access by specific court order. Admin. R. 9(G)(1)(c). Courts have the authority to seal court records in accordance with Ind. Code § 5-14-3-5.5. It is unclear whether or not the Court sealed the record you requested in accordance with this section of the APRA.

Moreover, it is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an "offender" for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). You are currently housed at the Pendleton Correctional Facility. It would appear that Jeffery Sloan, the person to which you sought the Probable Cause Affidavit, is also an "offender" for the purposes of the APRA and housed at the Pendleton Correctional Facility. The APRA contains an exception to disclosure for information that could affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
- (ii) the victim of a crime; or

(iii) a family member of a correctional officer or the victim of a crime; or
(B) concern or could affect the security of a jail or correctional facility. I.C. § 5-14-3-4(b)(23).

Thus, the Court would act within its discretion to withhold records that could concern or affect the security of a correctional facility. *See Opinions of the Public Access Counselor 11-FC-72 and 11-FC-192.* Again, however it is my opinion that the Court has not yet sustained its burden to show that the record you requested falls within this or any other exception to the APRA. *See* I.C. § 5-14-3-1. If the Court makes such a showing, the substance of the Court's denial has not violated the APRA. In the absence of any applicable statutory basis for withholding the record, however, I encourage Court to release the record to you as soon as practicable.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court has not sustained its burden to show that the record you requested is confidential or otherwise nondisclosable under the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized and cursive.

Joseph B. Hoage
Public Access Counselor

cc: Delaware Circuit Court