



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 24, 2012

B.A. Corley
6908 South Old U.S. Highway 41
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-117; Alleged Violation of the Access to Public Records Act by the Indiana Court of Appeals

Dear Mr. Corley:

This advisory opinion is in response to your formal complaint alleging that the Indiana Court of Appeals (“Court”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Steven F. Lancaster, Administrator, responded on behalf of the Court. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you mailed a written request for records to the Court on April 19, 2012. As of May 14, 2012, the date you filed your formal complaint with the Public Access Counselor’s Office, you further allege that you have yet to receive any response from the Court.

In response to your formal complaint, Mr. Lancaster advised that the Court has no record of receiving a records request from you. Further, even if the Court had received your requested, the records that were sought would not be considered public records pursuant to I.C. § 5-14-3-2(n). The materials that were allegedly requested refer to a volunteer panel that Judge Cale Bradford participated, in connection with the Indianapolis Bar Association, a 501(c)(6) organization. The materials for that program were not created for or on behalf of the Court, nor are they maintained by the Court.

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).

As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the Court received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the Court received your written request and did not respond to it pursuant to the timeframes provided in section 9, it violated the APRA. However, if the Court did not receive your request, it was not obligated to respond to it.

Regardless of the issue of receipt, the APRA provides that a public record means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency. *See* I.C. § 5-14-3-2(n). The Court advised that the records that you allegedly sought would not be considered "public records" pursuant to the APRA, as they were not created for or on behalf of the Court, nor where they maintained or on file with the Court. As the requirements of the APRA would only apply to the public records, the Court would have not violated the APRA by failing to provide non-public records in response to your alleged request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA if it never received your written request.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Steven F. Lancaster