



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 14, 2012

Kimberly J. Brock
245 South Bridge Street
Portland, Indiana 47371

Re: Formal Complaint 12-FC-93; Alleged Violation of the Access to Public Records Act by the Jay County Circuit Court

Dear Ms. Brock:

This advisory opinion is in response to your formal complaint alleging the Jay County Circuit Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Court. As of today's date, we have yet to receive a response from the Court.

BACKGROUND

In your formal complaint, you allege on March 19, 2012, you submitted a written request to the Court to inspect or obtain copies of certain records from Cause No. 38C-01-1203-MC-6. As of April 12, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive a response from 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).

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 twenty-four 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 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.

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). Further, courts have the authority to seal court records in accordance with Ind. Code § 5-14-3-5.5.

Without the benefit of a response from the Court, 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. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* 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 it has failed to sustain its burden. 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 the Court has failed to sustain its burden in denying your request for records pursuant to the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Jay County Circuit Court