



STATE OF INDIANA

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September 11, 2014

Mr. Richard Wayne Martin #129688
Putnamville Correctional Facility
1946 W. U.S. Hwy 40
Greencastle, IN 46135

Re: Formal Complaint 14-FC-174; Alleged Violation of the Access to Public Records Act by the Elkhart Superior Court No. 3

Dear Mr. Martin,

This advisory opinion is in response to your formal complaint alleging the Elkhart Superior Court No. 3 (“Court”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Court has responded via the Hon. Judge George W. Biddlecome. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion in response to your formal complaint received by the Office of the Public Access Counselor on August 12, 2014.

BACKGROUND

Your complaint dated August 5, 2014, alleges the Elkhart Superior Court No. 3 violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On July 21, 2014, you petitioned the Court for a copy of your sentencing hearing transcripts to be used in a not-yet-filed post conviction relief proceeding. As of the filing of your complaint, you had not received an Order from the Judge.

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 Ind. Code § 5-14-3-1. The Elkhart County Superior Court is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Court’s public records during regular business hours unless the

records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

It should be noted the Public Access Counselor does not insert himself into criminal or civil litigation. Your motion and the anticipated order are part of the criminal proceeding. These matters are under the sovereign and exclusive jurisdiction of the Court. That being said, the records you seek are public records and you are entitled to them pursuant to an Access to Public Records request, if one were to be made. The Judge has indicated in his response the records are available to you pursuant to the fee schedule found at Ind. Code § 5-14-3-8 (or Ind. Code § 33-37-5-1 for certain court records). The granting of indigent status is at the discretion of the Judge and is outside the purview of this Office.

CONCLUSION

For the foregoing reasons it is the Opinion of the Public Access Counselor that the Elkhart Superior Court No. 3 has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

Cc: The Honorable Judge George W. Biddlecome