



STATE OF INDIANA

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October 15, 2014

Mr. Otha S. Hamilton #217667
Pendleton Correctional Facility
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 14-FC-207; Alleged Violation of the Access to Public Records Act ("APRA") by the Marion County Superior Court 4

Dear Mr. Hamilton,

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court 4 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Honorable Judge Lisa Borges has responded on behalf of the Court. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 15 2014.

BACKGROUND

Your complaint dated August 29, 2014, alleges the Marion County Superior Court 4 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 or about July 21, 2014, you submitted a public records request to the Court seeking a transcribed copy of the testimony of a named individual. On July 24, 2014, the Court responded indicating a search for the records was underway. As of the day of your formal complaint – August 24, 2014 – you had not received any further response from the Court.

The Court responded to your formal complaint claiming it does not have records responsive to your request. There is no transcript of the testimony you describe. You sought the transcript of a DVD on which a child was interviewed. The Court alleges no such document exists.

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 Marion County Superior Court 4 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.

An agency is not required to produce records which are not in their custody. The Court argues they do not have records to satisfy the request. If this is the case, then obviously they do not have the obligation to produce them. The Court does not indicate, and this Office is not aware, who may be in possession of the transcript you seek. It is possibly a law enforcement record.

CONCLUSION

It is the Opinion of the Public Access Counselor that the Marion County Superior Court 4 has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Honorable Judge Lisa Borges