



STATE OF INDIANA

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April 1, 2014

Mr. Mike Williams #902606
Wabash Correctional Facility
6908 S. Old U.S. Hwy. 41
Carlisle, IN 47838

Re: Formal Complaint 14-FC-37; Alleged Violation of the Access to Public Records Act by the Allen County Superior Court

Dear Mr. Williams,

This advisory opinion is in response to your formal complaint alleging the Allen County Superior Court ("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 Wendy Davis. 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 February 28, 2014.

BACKGROUND

Your complaint dated February 25, 2014, alleges the Allen County Superior Court 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 February 6, 2014, you were denied access to a copy of information contained on what you refer to as a "trial disk." The Court, in Cause No. 02D04-8905-CF-395, denied your request stating the Court does not maintain "trial disks".

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 Allen 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).

Ind. Code § 5-14- 3-3(d) states a public agency that maintains...public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system.

The Court argues making such a disk would expose the information to manipulation and therefore compromise the integrity of the record. The Court explains it has studied the issue at length and has concluded the risk is too high for making copies of trial proceedings and releasing them to Department of Correction Offenders.

While I understand and appreciate the Court's aversion to any potential abuse, I believe open access considerations outweigh the risk of abuse. Any public record can be potentially altered by any requestor. It matters not that the requestor is an inmate. Therefore, I respectfully disagree with the Court's assertions and opine reasonable efforts should be made to fulfill your request, if possible.

Disks can be write-protected and technology utilizing digital rights management can be employed with relative ease. I concede a determined individual could overcome these obstacles and alter records at will; however, I cannot construe the Access to Public Records Act (APRA) to come to the conclusion potential manipulation of information can be a means of precluding access. To make that determination would strip the access laws of their intended purpose.

CONCLUSION

I have no information or evidence to suggest the Court has (or does not have) the method of electronic retrieval to make a trial disk of your proceeding. If they do, it is my recommendation they produce a write-protected disk of the proceedings you seek.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Hon. Wendy W. Davis, Judge, Allen County Superior Court