



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

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

January 29, 2008

Charles Tink
DOC #181696
Indiana State Prison
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 09-FC-14; Alleged Violation of the Access to Public Records Act by the Montgomery Circuit Court

Dear Mr. Tink:

This is in response to your formal complaint alleging the Montgomery Circuit Court ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Court's response to your complaint is enclosed for your reference. It is my opinion the Court has not violated the APRA.

BACKGROUND

In your complaint filed December 30, 2008, you allege you submitted a request for copies of records maintained by the Court. Specifically, you sent a request on December 3 seeking certified copies of transcripts of all hearing held regarding cause number 54C01-0706-FA78. Further, you requested all costs be waived, as you claim indigent status.

The Court responded to your complaint by letter dated January 9 from Judge Thomas Milligan. Judge Milligan contends the Court received your first request for the transcripts on October 2, 2008. The Court denied access to the records on October 3. The Court later received the request you submitted on December 3 but has not responded. The Court contends that transcripts of hearings are not prepared as a matter of course. They are prepared only when requested by a party to the litigation, and you were not a party to the litigation for which you have requested transcripts. Further, even when transcripts are prepared for an individual who has a legitimate interest in the litigation, the transcripts are not prepared until a fee arrangement has been made. When the Court receives a request for a waiver of fees, the Court scrutinizes the legitimacy of the interest of the person requesting the transcript to determine whether an expenditure of public funds is justified. The Court does not find a legitimate interest here. The Court indicates

that if you make payment arrangements, the transcript will be provided upon payment of fees.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Court is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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. I.C. § 5-14-3-2.

Here, you have requested that the Court provide you with copies of transcripts of hearings held by the Court. Generally, if a person is entitled to a copy of a public record under the APRA and the agency has reasonable access to a machine capable of reproducing the record, the public agency must provide at least one copy of the record to the person. If the agency does not have reasonable access to such a machine, the person is entitled only to inspect and manually transcribe the record. An agency may require that the payment for copying costs be made in advance. I.C. § 5-14-3-8(e). Those fees must conform to the fee provisions of I.C. § 5-14-3-8.

There is no provision in the APRA entitling you to copies of public records at no charge. It is possible in some instances the General Assembly may have provided for fee waivers for copies of certain public records. A court may grant a waiver of fees but is not required by the APRA to do so. In the case of your request to the Court, you did not provide any statutory or other legal authority that would have authorized you to obtain copies at no charge. As such, the Court has not violated the APRA by indicating it will charge you for copies of the transcripts. Further, the Court did not violate the APRA by indicating the payment must be made in advance of preparation of the transcripts, as I.C. § 5-14-3-8(e) provides that the Court may charge the fees in advance.

While the APRA provides that an agency must respond to a request received by mail within seven days of receipt (*See* I.C. § 5-14-3-9), nothing requires an agency to respond to repeated requests for the same record(s). Therefore, it is my opinion the Court did not violate the APRA by failing to respond to the December 3 request since it had already responded to the October 2 request for the same records.

CONCLUSION

For the foregoing reasons, it is my opinion the Court has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Judge Thomas K. Milligan, Montgomery Circuit Court