



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

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

August 5, 2010

Mr. Michael J. Shepard
P.O. Box 488
Boonville, IN 47601

Re: Formal Complaint 10-FC-156; Alleged Violation of the Access to Public Records Act by the Vanderburgh Circuit Court Adult Probation Department

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh Circuit Court Adult Probation Department (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your complaint, you allege that you requested probation records from the Department on June 13, 2010. You sent a follow up request on June 23rd seeking the same information. As of June 28th, you state that "no response or acknowledgement has been received."

In response to your complaint, the Department states that the records you requested are confidential pursuant to Ind. Administrative Rule 9 and the applicable Indiana Probation Standards promulgated by the Judicial Conference of Indiana under Ind. Code § 11-13-1-8(b).

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." I.C. § 5-14-3-1. The Department does not dispute that it is 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 Department's public records during regular business hours unless the

records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). 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. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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. Here, if the Department failed to respond to your written request within the required seven (7) days, it violated the APRA.

However, the Department did not violate the APRA by refusing to provide you with the probation records. Under section 4 of the APRA, a public agency may not disclose records declared confidential by 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. As the Department noted in its response, Admin. R. 9 list several categories of confidential records, including “[i]nformation in probation files pursuant to the Probation Standards promulgated by the Judicial Conference of Indiana.” Admin. R. 9(G)(xv). The Indiana Probation Standards provide that “[i]nformation contained in probation files shall be confidential and shall not be released without the approval of the judge.” Ind. Probation Standards IV(A)(1.4). Based on these provisions, the Department acted appropriately by refusing to provide you with the probation records you requested.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Department failed to respond to your request within seven (7) days, the Department violated the APRA. However, the Department did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: J. Corey Asay