



STATE OF INDIANA

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March 9, 2010

Mr. Tracey L. Wheeler
DOC # 140083
4490 W. Reformatory Road
Pendleton, IN 46064

Re: Formal Complaint 10-FC-31; Alleged Violation of the Access to Public Records Act by the Disciplinary Commission of the Supreme Court

Dear Mr. Wheeler:

This advisory opinion is in response to your formal complaint alleging that the Disciplinary Commission of the Supreme Court ("Commission") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The Commission's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request for public records to the Commission on January 6, 2010. You further allege that as of the date of your complaint, the Commission had neither produced the requested records nor cited any "legal exemptions" for their nondisclosure.

In response to your complaint, Seth T. Pruden, interim executive secretary for the Commission, notes that the records you requested are investigative files of the Commission that are not subject to public disclosure under *Ind. Admission & Discipline Rule 23 § 22(a)*, which Mr. Pruden quotes in his response:

Except as provided in Section 22(b) [pertaining to the closing of hearings], after a verified complaint has been filed with the Court, all proceedings, except for adjudicative deliberations, and all papers filed of record with the clerk shall be open and available to the public. **Proceedings and papers that relate to matters that have not resulted in the filing of a verified complaint shall not be open and available to the public. Investigative**

reports and other work product of the Executive Secretary or his or her agents, and statements of circumstances conditionally agreeing to discipline submitted pursuant to Section 11(c) shall be confidential and not open to public inspection.
(Emphasis added).

Mr. Pruden defines a “verified complaint” as “a formal charge of misconduct against an attorney which is filed with the Clerk of the Indiana Supreme Court by the Disciplinary Commission and is a public document and is available through the office of the Clerk.” Moreover, “complaints” and other grievances that are submitted to the Commission itself become part of the relevant investigatory file and are not subject to disclosure pursuant to Rule 23.

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 Commission does not dispute that it is a public agency subject to the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the Commission’s public records 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 request for access to public 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 twenty-four (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. When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

Here, it is unclear to me whether or not the Commission received your initial request. I note that in your complaint, you listed a mailing address for the Commission that is incorrect. If the Commission did not receive your request, it was not obligated to respond. If the Commission did receive your request and failed to respond in accordance with section 9 of the APRA, it violated the APRA. Regardless, it is my opinion that the Commission has not violated the APRA by refusing to disclose records that are confidential under *Ind. Admission & Discipline Rule 23*. Under Ind. Code § 5-14-3-

4(a)(8), a public agency may not disclose a record declared confidential by or under rules adopted by the Indiana Supreme Court.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Commission received your request, it should have responded to you in accordance with section 9 of the APRA. It is further my opinion that the Commission acted in accordance with section 4(a)(8) the APRA by denying your request for records that are confidential according to rules adopted by the Indiana Supreme Court.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Seth T. Pruden