



STATE OF INDIANA

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October 12, 2011

Mr. Rocky M. Shroyer
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 11-FC-259; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court – Criminal Division 1

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court – Criminal Division 1 (“Court”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Judy Daugherty, Chief Bailiff, responded on behalf of the Court. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request in writing on September 26, 2011 for a copy of the Affidavit of Probable Cause filed under Cause No. 49-G01-0508-FB-132823, State of Indiana vs. Samantha Laney. On September 28, 2011, the Court responded to your request and provided that the documents you requested were not part of your file and you were not entitled to copies at the public’s expense.

In response to your formal complaint, the Court advised that all records responsive to your request have now been mailed to you at the Pendleton Correctional Facility.

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

A request for records may be oral or written. *See* I.C. § 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* I.C. § 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* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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. *See* I.C. § 5-14-3-9(c). 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, the Court responded to your records request within the timelines provided by the APRA.

The Court is not obligated to provide you with copies for free. The APRA permits a public agency to charge a fee for copies of public records. *See* I.C. § 5-14-3-8. Public agencies may require a person to pay the copying fee in advance. *See* I.C. § 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee, *Op. of the Public Access Counselor 07-FC-124*, or to mail records to you at its expense. *Op. of the Public Access Counselor 10-FC-59*. As the Court has now made available to you, at appears to be no cost, all records that were responsive to your request, I trust that this satisfies your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, flowing style.

Joseph B. Hoage
Public Access Counselor

cc: Judy Daugherty