



STATE OF INDIANA

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December 8, 2011

Travis S. Cunningham
DOC # 156774
1946 West U.S. Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 11-FC-291; Alleged Violation of the Access to Public Records Act by the Cass County Superior Court, Room 2

Dear Mr. Cunningham:

This advisory opinion is in response to your formal complaint alleging the Cass County Superior Court, Room 2 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Judge Rick Maughmer responded on behalf of the Court. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Court on October 14, 2011, for a copy all transcripts for your 2010 court dates under Cause No. 09-D02-0411-FA-000011. The Court responded to your request and provided copies of the chronological case summary of your criminal case. The Court denied your request for all other records without a hearing.

In response to your formal complaint, Mr. Maughmer advised that all files related to your criminal proceedings have always been available and are available to anyone for inspection and copying at the Cass County Government Building. All of your prior court proceedings are available in transcript form upon request and prior arrangement with the court reporter for compensation in accordance with local rule 09-AR15-6. A written transcript of the hearings that you have requested has never been created. Pursuant to Indiana law, you were not entitled at the time of your request to a pauper or indigent transcript of the requested hearings created at public expense.

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).

The APRA provides the right to inspect and copy records of a public agency. However, it is separate and distinct from other court proceedings, both civil and criminal. While the APRA does not require a requester to specifically invoke the APRA, it is my opinion that after reviewing the request you made of the Court it is reasonable for it to be interpreted as being made pursuant to your criminal proceedings under Cause No. 09-D02-0411-FA-000011. As such, your request was made through means outside the scope of the APRA. See *Opinions of the Public Access Counselor 07-FC-314 and 08-FC-324*. I would direct you to Case County local rule 09-AR15-6, as provided by Judge Maughmer, which governs the local process regarding the request and payment of court transcripts.

Alternatively, even if your request was interpreted as being made pursuant to the APRA, the APRA does not require a public agency to create a new record in order to satisfy a public records request. See *Opinion of the Public Access Counselor 10-FC-56*. Here, the Court has provided that written transcripts of the hearings you requested have never been created. As such, even if APRA was applicable, the Court would not be required to create a new record in responding to your request.

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 stylized and cursive.

Joseph B. Hoage
Public Access Counselor

cc: Judge Rick Maughmer