



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR

JOSEPH B. HOAGE

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

December 22, 2011

Michael J. Shepard
3500 N. Harlan Avenue
Evansville, Indiana 47711

Re: Formal Complaint 11-FC-300; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Circuit-Superior Courts

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Circuit-Superior Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Susan K. Kirk, Clerk of the Vanderburgh Circuit and Superior Court, responded on behalf of the Court. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Court on October 23, 2011 and November 11, 2011 for public records pursuant to the APRA. As of December 6, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive a response or any records from the Court.

In response to your formal complaint, Ms. Kirk provided that the Clerk's Office received your requests and they were forwarded to the Court. The Clerk has not received any further information or direction from the Court in regards to your requests.

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. You currently have a pending criminal matter before the Court under Cause No. 82-C01-0704-FB-00448 and another proceeding under 82-C01-0004-CF-00469. Both of your alleged APRA requests were submitted to the Court pursuant to the cause numbers listed above. Your October 23, 2011 request included a request for copies, an Order from the Court, and a waiver of all applicable fees. Your November 11, 2011 request was filed under a Petition for Writ of Habeas Corpus and a Waiver of Filing Fee. After reviewing your request, it is evident that the Court interpreted your request as one being made pursuant to your criminal proceedings, not as one made pursuant to the APRA. As to your November 11, 2011 request, the CCS entry provided that copies were sent to your attorney. I believe that the Court's interpretation of your request being made pursuant to your criminal proceedings, not the APRA, was reasonable in light of the conflicting nature of the requests that were submitted. 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*

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: Susan K. Kirk