



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

May 24, 2012

B.A. Corley
6908 South Old U.S. Highway 41
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-118; Alleged Violation of the Access to Public Records Act by the Indiana Court of Appeals

Dear Mr. Corley:

This advisory opinion is in response to your formal complaint alleging that the Marion County Circuit Court (“Court”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Mark Mertz, Assistant Corporation Counsel, responded on behalf of the Court. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you mailed a written request for records to the Court on April 17, 2012 for a “review copy of material that Mr. Jones previously lectured on.” As of May 14, 2012, the date you filed your formal complaint with the Public Access Counselor’s Office, you further allege that you have yet to receive any response from the Court.

In response to your formal complaint, Mr. Mertz advised that the records you sought were not “public records” pursuant to the APRA. Said records were created by a private attorney with collaboration from Court Commissioner Mark Jones, to be used as handout materials at a Continuing Legal Education Seminar. Commissioner Jones’ works with respect to such records was not done in any connection with his official duties with the Court, nor are the records maintained by the Court.

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 that a public record means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency. *See* I.C. § 5-14-3-2(n). The Court advised that the records that you sought were not “public records” pursuant to the APRA, as they were not created for or on behalf of the Court, nor were they maintained by or on file with the Court. As the requirements of the APRA would only apply to the public records, it is my opinion that the Court would have not violated the APRA by failing to provide non-public records to you in response 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 'Joe Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Mark Mertz