



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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June 18, 2012

Gary Otto
DOC 905901
5124 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-139; Alleged Violation of the Access to Public Records Act by the Marion County Child Support Division

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Child Support Division of the Marion County Prosecutor's Office ("Division") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Laurel S. Judkins, Chief Counsel, responded on behalf of the Division. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Division on May 7, 2012. As of June 5, 2012, 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 Division.

In response to your formal complaint, Ms. Judkins advised that due to a clerical error, the Division failed to respond to your request within seven (7) days of its receipt. However, all records and/or information have now been provided to you that were responsive to your request.

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 Marion County Prosecutor 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 Division'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 twenty-four 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 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, Ms. Judkins acknowledged that, due to a clerical error, the Division failed to respond to your written request for records within seven (7) days of its receipt. It is my opinion that the Division acted contrary to the requirements of section 9(b) in responding to your request. However, as all records and/or information have now been provided to you that were responsive to your request, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Division acted contrary to the requirements of the APRA by not responding to your written request within seven (7) days of its receipt.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage
Public Access Counselor

cc: Laurel Judkins