



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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February 6, 2012

Mr. Ronald D. Mitchell
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 12-FC-30; Alleged Violation of the Access to Public Records Act by the Tippecanoe County Superior Court

Dear Mr. Mitchell:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Douglas Masson, Attorney, responded on behalf of the Court. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a written request to the Court on January 3, 2012 for the criminal history of Jeffery Simmons. You provide that you are entitled to the records pursuant to the rules of discovery. On January 6, 2012, the Court issued an order under Cause No. 79-D02-0406-PC-00007, denying your request.

In response to your formal complaint, Mr. Masson advised that you filed a request under Cause No. 79-D02-0406-FC-7 with the Court for the criminal history of Jeffery Simmons. You were seeking evidence in support of your petition for post-conviction relief. It was in that context that the Court denied your request for the criminal history of another defendant, not a request submitted pursuant to the APRA. If the request had been submitted pursuant to the APRA, the request sought confidential information, or alternatively lacked the required specificity. Disclosure of an individual's criminal history is governed by I.C. 10-13-3. You would not have been entitled to Mr. Simmons' criminal history under any of the circumstances contemplated under I.C. 10-13-3. In addition, your request lacked specificity in regard to what actual documents were sought and the only identifying information that was provided for Jeffery Simmons was his first and last name.

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 stated in your formal complaint that you believe that pursuant to the rules of discovery that you were entitled to the criminal history that was sought. The Court denied your request in an order issued under 79-D02-0406-PC-00007. After reviewing your formal complaint and the Court response to your original request, it is evident that the Court interpreted your request as one being made pursuant to your criminal matter, not the APRA. I believe that the Court’s interpretation of your request being made pursuant to your petition for post-conviction, and not the APRA, was reasonable in light of the plain language of your formal complaint and conflicting nature of the request that was filed with the Court. 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.*

In the future, should you submit an APRA request to an agency for an individual’s criminal history, the APRA states that a public agency may not disclose records that are declared confidential by state statute.” *See* I.C. § 5-14-3-4(a)(1). Indiana law provides that limited criminal history information may not be released except under specific circumstances. *See* I.C. § 10-13-3-27. “Limited criminal history” is defined as information with respect to any arrest or criminal charge, which must include a disposition.” *See* I.C. § 10-13-3-11. Limited criminal history is subject-specific; in other words, a limited criminal history relates to a particular person about whom the information pertains. *See generally* I.C. § 10-13-3. Indiana Code § 10-13-3-31 provides:

Release of data to subject person; fee; challenge of data authorized Sec. 31. (a) Unless otherwise prohibited by law, a criminal justice agency that maintains criminal history data, upon request and proper identification of the person about whom criminal history data is maintained, shall provide that person with a copy of the person's criminal history data for a reasonable fee.
(b) Any person may challenge the information contained in the person's criminal history data file.

If you can demonstrate to the agency that your request meets the criteria of the I.C. 10-13-3, the agency would be required to provide the requested criminal history.

I would also note that the APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-

3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12.* Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request. *Opinion of the Public Access Counselor 04-FC-38.*

In your request of the Court for a criminal history, you simply provided the first and last name of the individual. If you are able to meet the requirements of I.C. 10-13-3, please keep in mind that the agency responding to your request will likely request more identifying traits than the person’s first and last name (i.e. date of birth, middle name, ethnicity, etc...) in order to properly process 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 with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Douglas Masson