



# 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](http://www.IN.gov/pac)

May 15, 2012

Rocky M. Shroyer  
5501 South 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 12-FC-98; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court*

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior 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 submitted a written request to the Court on March 15, 2012 for a copy of the Amended Petition for Post-Conviction Relief filed in *State of Indiana v. Corey Mills*, 49-G06-0209-PC-206534. On March 21, 2012, Judge Mark Stoner denied your request pursuant to I.C. § 5-14-3-4(b)(23) as you were an incarcerated offender and the release of information would concern or affect the security of a correctional facility.

In response to your formal complaint, Mr. Mertz advised that the Court has reexamined its response to your request and now believes that it can provide you with a copy without substantial concern for the affect the release of the record would have on a correctional facility.

## 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).

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 24 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 (7) 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, the Court responded in writing to your request within seven (7) days of its receipt. As such, it is my opinion that the Court complied with the requirements of section 9 of the APRA.

The APRA contains an exception to disclosure for records that could affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
- (ii) the victim of a crime; or
- (iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility. I.C. § 5-14-3-4(b)(23).

The APRA defines “offender” as “a person confined in a penal institution as the result of the conviction for a crime.” *See* I.C. § 5-14-3-2(i). Pursuant to the APRA, you are an “offender”, currently housed at the Westville Correctional Facility. Mr. Mills, the subject of your records request, is also considered an “offender” and is currently incarcerated at the Putnamville Correctional Facility. § 5-14-3-4(b)(23) does not provide that records that could concern or affect the security of a jail or correctional facility are confidential; rather the subsection provides a public agency with discretion regarding the release of such records. After reexamining the record that was responsive to your request, the Court has advised that a copy of the record will be mailed to you in the next two (2) days, which I trust is in satisfaction of your complaint.

## 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 style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage  
Public Access Counselor

cc: Mark Mertz