



STATE OF INDIANA

MICHAEL R. PENCE, 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 2, 2013

Mr. Gersh Zavodnik
4410 Clayburn Drive
Indianapolis, IN 46268

Mr. Jesse Clements
P.O. Box 68082
Indianapolis, IN 46268

Re: Formal Complaint 13-FC-130; Alleged Violation of the Access to Public Records Act by Marion County Superior Court 11

Dear Mr. Zavodnik and Mr. Clements:

This is in response to your formal complaint alleging the Marion County Superior Court 11 (the "Court") violated the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following opinion in response to your complaint. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.* Ms. Andrea Brandes Newsom, Court Administrator, responded on behalf of the Court. Her response is enclosed for your reference.

BACKGROUND

Your complaint appears to allege that the Court violated the APRA by failing to produce records you requested within a reasonable time. In a letter sent to the Court on April 15, 2013, you requested to review "[t]he audio tape of the April 12, 2013 hearing that occurred at 10:00 a.m. on Cause No. 49D11-1107-CT-028895". Ms. Newsom responded to your request on behalf of the Court in a letter¹ dated April 22, 2013, informing you that the Court had initiated a search for records responsive to your request. Ms. Newsom also noted that responsive records would be examined to determine "whether they contain any material which by statute shall or may be withheld from public inspection", and that the Court would notify you when this process has been completed.

You filed this formal complaint four (4) days later on Thursday, April 26, 2013, and requested priority status under 62 I.A.C. § 1-1-3. Because you note that review of the requested record is needed in order to prepare for a hearing before Judge Hanley in Superior Court 11 on May 17, 2013, priority status has been granted pursuant to 62 IAC § 1-1-3(3).

¹ Ms. Newsome sent separate, nearly identical letters to both Mr. Clements and Mr. Zavodnik.



STATE OF INDIANA

MICHAEL R. PENCE, 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

Ms. Newsom's response on behalf of the Court asserts that the Court has not committed any violation of the APRA. She notes that the APRA only establishes specific timeframes within which a public agency must acknowledge a request for public records, and that she did respond on behalf of the Court on April 22, 2013, within seven (7) days of receiving your request. The APRA does not impose a specific time requirement within which public agencies must actually produce records responsive to a request, but only provides that responsive records be disclosed within a reasonable period of time.

Ms. Newsom argues that the Court's responsiveness to your request "has been reasonable in light of [the Court's] regular duties, its staffing resources, and its special obligation with respect to judicial records. She explains that the Court "operates a busy civil calendar," and that "the Court's staffing level has been reduced by one full time employee for the past several months". Ms. Newsome also notes that the Court has "obligations to preserve the integrity of judicial records, including audio recordings of court proceedings", and as such the Court "has undertaken a thorough review of the requirements concerning audio recordings and judicial records" contained in the Indiana Judicial Conduct Rules and other rules adopted by the Indiana Supreme Court. Finally, Ms. Newsom states that the Court issued an order on May 1, 2013 granting your request to inspect audio records. A copy of this Order is included along with Ms. Newsom's response.

ANALYSIS

As an initial matter, I note that your complaint appears to raise a number of concerns or issues that are well beyond the purview of the Office of the Public Access Counselor. The duties of the public access counselor are defined in I.C. §5-14-4-10, and include issuing "advisory opinions to interpret *the public access laws* upon the request of a person or a public agency". See I.C. 5-14-4-10(6) (emphasis added). Therefore, in this opinion I address only those issues arising from interpretation of the APRA; namely whether the Court has violated the APRA by failing to respond timely or by failing to produce the record you requested within a reasonable time.

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 a public agency's 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 by mail, email 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). Here, the Court did respond to your April 15, 2013 request on April 22, 2013, which is within the time limitation imposed by the APRA.



STATE OF INDIANA

MICHAEL R. PENCE, 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

After acknowledgment of a request, the APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe.

Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by Section 3 of the APRA. I.C. §5-14-3-7(c). Thus, under section 7, the Court should not permit employees to neglect their essential duties in order to respond to public records requests, but the Court cannot simply ignore requests either, even when facing a heavy caseload and reduction in staffing resources as described by Ms. Newsom. Based on the information provided in the complaint and in the Court's response, I cannot say that the Court has acted contrary to section 7 of the APRA.

To apply these standards to the present situation, the Court attributes the brief delay of fifteen (15) calendar days in producing the record you requested to the Court's heavy caseload, its reduced staffing resources, and its special obligation with respect to judicial records. Further, according to Ms. Newsome, the Court issued an Order on May 1, 2013 granting your request to inspect audio records. Given these facts, I cannot say that the Court has violated the APRA by taking an unreasonably long time to produce records responsive to your request, or by denying you access to public records.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court has not violated Section 3(b) of the APRA by not providing responsive records to you as of April 26, 2013. Further, it is my opinion that the Court has complied with requirement to produce records in a reasonable period of time under Section 3(b) of the APRA by making the requested records available to you for inspection as provided in the Order issued by the Court on May 1, 2013.

Please contact me if I can be of additional assistance.

Best regards,

Jennifer L. Jansen



STATE OF INDIANA

MICHAEL R. PENCE, 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

Acting Public Access Counselor

Cc: Ms. Andrea Brandes Newsom, Court Administrator, Marion Superior Court