



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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June 24, 2013

Mr. Terrence J. Fuqua
Wabash Valley Correctional Facility
P.O. BOX 1111
Carlisle, IN 47838-1111

Re: Formal Complaint 13-FC-172; Alleged Violation of the Access to Public Records Act by the Clerk of the Allen County Circuit and Superior Courts

Dear Mr. Fuqua,

Please accept this letter as a response to your formal complaint alleging the Clerk of Allen County Circuit and Superior Courts ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Lisbeth A. Borgmann, Clerk of the Courts, responded on behalf of the Clerk of the Allen County Circuit and Superior Courts. Her response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 17, 2013. As such, your complaint is being treated with priority status.

BACKGROUND

Your complaint alleges that the Honorable Judge Wendy Davis violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

In a request dated May 31, 2013, you requested a number of records from the Clerk of the Allen County Superior Court, but not from Judge Davis. You addressed your request to "Clerk of Allen County Superior Court". Specifically, you requested:

All discovery under Cause No. 02D05-1112-FA-65; Specifically CD of interview conducted by the FWPD of State witnesses [redacted], on October 13, 2011. Case No. 11F163969; CD of all proceeding, pretrial and trial pursuant to Cause No. 02D05-1112-FA-65; and the name of the Judge that signed the search warrant for case number 11F173900.



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On June 11, 2013, Ms. Lisbeth Borgmann, Clerk of the Allen County Circuit and Superior Courts responded to your request denying the public access stating that the records you sought were not in the possession of the Clerk and they maintain none of the records you are seeking. In their denial letter, the Clerk of the Court directed you, in part, to the public agencies maintaining those records.

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 Ind.Code § 5-14-3-1. The Clerk of the Allen County Circuit and Superior is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). 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.

Your letter, dated May 31, 2013 was not processed and mailed by your correctional facility until June 7, 2013. Therefore, the response of the Clerk of the Court of Allen County on June 11, 2013 was timely pursuant to Ind. Code § 5-14-3-9(b).

The APRA requires that certain law enforcement records be made available for inspection and copying. See Ind. Code § 5-14-3-5. In this regard, information must be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint. *Id.* Ind. Code § 5-14-3-5(a) provides that if a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

(1) Information that identifies the person including the person’s name, age, and address.



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- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
 - (A) time and location of the arrest or the issuance of the summons;
 - (B) investigating or arresting officer (other than an undercover officer or agency); and
 - (C) investigating or arresting law enforcement agency.

If a person is received in a jail or lock-up, Ind. Code § 5-14-3-5(b) provides that the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on who order the person is being held.
- (3) The time and date that the person was received and time and date of the person's discharge or transfer.
- (4) The amount of the person's bail or bond, if it has been fixed.

In this case, the records you requested are accessible and available to you under the APRA. The Clerk alleges that the access was denied because you made the request upon the wrong public agencies. The Clerk maintains that the discovery materials and arrest information is held by the Fort Wayne Police Department. It is encouraged that your request be made upon that Department.

The specific court in which proceedings commence is the actual custodian of the transcripts or electronic copies of all records relating to the cause numbers. Your request on May 31, 2013 was addressed to the Clerk of the Allen County Superior Court. It did not identify with specificity the Court in which the proceedings were held. A denial of records under the APRA is not a violation if the public agency upon which the request was made is not the custodian of the record. *Opinion of the Public Access Counselor 13-FC-85* addresses this same issue regarding county elected clerks and individual courts. Each judge is a sovereign elected official separate from the county elected Clerk of the Courts.

The court reporter of Allen County Superior Court 5, Honorable Wendy Davis presiding, has advised the Office of the Public Access Counselor that she is the custodian of the court records you seek and they are readily available for inspection or copy in accordance with APRA. Those records may be requested directly from Judge Davis' court staff.



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CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor that the Clerk of the Allen County Circuit and Superior Courts did not violate the APRA in denying your request.

Best Regards,

A handwritten signature in black ink, appearing to read "LH Britt", is written over the typed name.

Luke. H. Britt
Acting Public Access Counselor

cc: Lisbeth A. Borgmann