



STATE OF INDIANA

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July 17, 2013

Mr. Dominic Smallwood
DOC 108417
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 13-FC-201; Alleged Violation of the Access to Public Records Act by the St. Joseph Circuit Court

Dear Mr. Smallwood:

This advisory opinion is in response to your formal complaint alleging the St. Joseph Circuit Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Terri J. Rethlake, St. Joseph County Clerk, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that you submitted a written request for records to the Court on or about June 10, 2013 for a Motion of Discovery filed in your criminal case. As of July 11, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you allege that the Court has failed to respond to your request in any fashion.

In response to your formal complaint, Ms. Rethlake advised that you have seven felony cases on file with the Court. Your complaint does not reference which case you are seeking records from. Upon receipt of the respective cause number, the Clerk will provide all records 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 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 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). 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.

The APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). Counselor Neal provided the following regarding “reasonable particularity”:

“When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.mw.com, accessed July 18, 2007. There are no specific guidelines as to what constitutes reasonable particularity. Certainly a request cannot always be considered to be made without reasonable particularity solely because it covers a large number of records. As I general guideline, I advise agencies that when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity. *Opinion of the Public Access Counselor 09-FC-24*.

Because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88*. The Court is unable to process your request until you provide the cause number for the criminal matter in which the Motion for Discovery was filed. The Court has provided you with a list all cause numbers maintained by the Court under your name. Upon notification of the Court of the proper cause number, the Motion for Discovery will be provided in response to your request.

CONCLUSION

Based on the foregoing reasons, it is my opinion that as the Court has sought further identifying information from you in order to process your request; it has not acted contrary to the requirements of the APRA. Upon receipt of the respective cause number, the Court has provided that all records responsive to your request will be provided.

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: Terri J. Rethlake