



STATE OF INDIANA

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February 17, 2014

Mr. Jesse Clements
PO Box 68082
Indianapolis, IN 46268

Re: Formal Complaint 14-FC-07; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court 5

Dear Mr. Clements,

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court 5 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk has responded via Ms. Andrea Brandes Newsom, Court Administrator. Her response is enclosed for your review. 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 January 13, 2014.

BACKGROUND

Your complaint dated January 13, 2014, alleges the Marion County Superior Court 5 violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On December 18, 2013, you allegedly made an oral request to the Court's staff for the inspection of the following records: the public audio record of a November 12, 2013 hearing; the court reporter's bond; the court reporter's oath; Judge Altice's bond; Judge Altice's Oath; and all records, including but not limited to receipts, credit card transactions, deposit slips, invoices, letters correspondence, emails texts, facsimiles, documents marked "paid", requests for payments, demands for payments, etc., that indicate when full or partial payment was received for each audio recording provided to any person or agency of a Superior Court 5 hearing since January 1, 2013."

You placed a telephone call to the Court on January 14, 2014 to the Court requesting a status update regarding the production of documents. You were allegedly told your request must be in writing, yet she failed to identify the statutory exception authorizing the withholding of all or part of the record pursuant to Ind. Code § 5-14-3-9(d).

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 Marion County Superior Court 5 is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Court’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 the request has been received and information regarding how or when the agency intends to comply.

The Court has responded and submitted your Verified Praecipe and Notice of Lawsuit wherein you requested the items listed above. You filed this pleading on December 18, 2013. Moreover, the Court has attached a written response dated December 19, 2013 acknowledging your request. You state that as of January 14, 2014, you had not received a response or communication from the Court.

I cannot determine if the acknowledgement dated December 19, 2013 was mailed to you or received by you, however, pursuant to Ind. Code § 5-14-4-10(6), the Public Access Counselor may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under IC 5-14-1.5 or IC 5-14-3. This prevents a litigant from forum shopping. As it is clear from your verified pleading, you have incorporated your public records request into cause number 49D05-0710-PL-046451 and it has become part of a civil judicial proceeding. Your specific request was incorporated and made part of separate litigation. As such, I am prohibited by law from issuing an opinion in this matter. Any denial of a request would be subject to the Indiana Rules of Trial Procedure as a discovery matter. If your discovery request is denied, there are remedies available to you through an interlocutory appeal process.

Regards,

A handwritten signature in black ink, appearing to be the initials 'JTB' with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Andrea Brandes Newsom