



STATE OF INDIANA

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October 31, 2014

Mr. John D. May - #962364
Putnamville Correctional Facility
1946 West U.S. Highway 40
Greencastle, IN 46135

Re: Formal Complaint 14-FC-227; Alleged Violation(s) of the Access to Public Records Act by the Greene County Circuit Court¹

Dear Mr. May,

This advisory opinion is in response to your formal complaint alleging the Honorable Erik C. Allen, Judge of the Greene Circuit Court ("Court"), violated the Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 *et. seq.* The Court has responded to your complaint; accordingly, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 1, 2014.

BACKGROUND

Your complaint filed on October 1, 2014, alleges the Honorable Erik C. Allen, Judge of the Greene Circuit Court ("Court") and Ms. Susan Fowler, Greene County Clerk of Courts ("Clerk") violated the Indiana APRA and ODL.

On September 12, 2014, you filed a formal request for court records with the Clerk, specifically the "Transcript of Voir Dire," in the case 28C01-1402-FC-12, pursuant to I.C. § 5-14-3-1, *et seq.*, the Indiana APRA. The request indicated you are an indigent *pro se* litigant, and you needed the records to adequately prepare for filings in the case.

You claim the Greene County Clerk of Courts ("Clerk") violated APRA by failing to respond to your request within seven (7) days. This Office has no record of any response

¹ The Court has responded to your complaint and from the information provided, it can be reasonably inferred the Court was acting on behalf of both the Court and the Clerk when it took the actions identified in this Opinion. Therefore, only the Court will be addressed in this Opinion. Furthermore, you allege a violation of the Open Door Law, however, you have not identified any official action taken by a majority of a named governing body in your complaint and the portion of your complaint alleging an ODL violation will not be addressed.

by the Clerk in this matter. However, on September 16, 2014, the Court entered an Order (presumably on behalf of both the Court and the Clerk) indicating you are represented by counsel in a pending appeal and, therefore, must submit pleadings to the court through your attorney and if you wish to inspect and copy a public record, the court file is available during regular business hours for you or anyone on your behalf to have access to inspect and copy. You claim your request for court records was not a pleading to the court regarding your case, but rather a public records request made to the Clerk and made outside the purview of the judicial process. Further, you claim the Court's action was inappropriate because an Order was issued in response to your public records request to the Clerk.

The Court responded to your complaint on October 14, 2014. The Court claims the APRA and ODL were not violated because you have full access to the information requested consistent with your rights within your pending criminal case and conferred by I.C. 5-14-3 and Administrative Rule 9, and your rights have not been compromised in any fashion by the Greene Circuit Court. Additionally, the Court claims the court does not have a duty to inspect and copy court records on behalf of an inmate unless such a duty is created by amendment to the statutes by legislative action or by amendment to Administrative Rule 9 by the Indiana Supreme Court.

DISCUSSION

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 Greene County Circuit Court 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 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).

I have held on several occasions that litigants during the course of a judicial proceeding should avail themselves of the discovery process rather than utilizing APRA requests. To forum shop between the two procedure standards would only serve to muddy the waters between the judicial process and a legislative privilege. This, however, is only the case when one party in the litigation is a public agency upon which an APRA requests seeking documentation germane to the proceedings is served. This Office has not addressed a situation in which the Court itself is served an APRA request in the course of ongoing litigation.

Your request was conspicuously marked as a public records request and was not served upon the Court in your capacity as a defendant or litigant. The Court integrated your request into the appellate proceeding *sua sponte*. While your records request was not denied per se, the APRA does not contemplate such an action. In effect, the Court Order stated you are represented by Counsel and you must submit pleadings through your attorney. You did not submit a pleading, however. Access to public records requests

served upon the Court is not a pleading. Furthermore, the Court states the Court is “not aware of any special privilege or right created for an inmate by either I.C. 5-14-3 or Administrative Rule 9, or otherwise, to have the Court inspect and copy court records for an inmate”.

Inmates, of course, do not have the opportunity to inspect and copy the Court’s records during business hours. It is true they may have a representative do so on their behalf, however, it is the practice of a great many courts in Indiana to search, retrieve and produce records for inmates by mailing them directly to the Department of Correction facility where you are incarcerated. It is not an unreasonable burden to expect Greene County do the same as the majority of other courts in the State.

Please be advised, however, the APRA does not take indigent status into account under the prescribed fee schedule. Indigence status is considered in litigation proceedings; however, as discussed above, an APRA request is not part of that process. Therefore, the Court may charge you a per page copy fee of .10 cents plus the actual cost of mailing.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Greene County Circuit Court should treat the underlying request as an Access to Public Records request outside the litigation process and produce the records upon receipt of payment of mailing and copying costs.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Hon. Judge Erik C. Allen