



STATE OF INDIANA

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December 8, 2008

Sabree Q. Blackman Najee
DOC #110245
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 08-FC-232; Alleged Violation of the Access to Public Records Act by the Howard Superior Court II

Dear Mr. Najee:

This is in response to your formal complaint alleging the Howard Superior Court II ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Court's response to your complaint is enclosed for your reference. It is my opinion the Court has not violated the APRA.

BACKGROUND

In your complaint filed November 6, 2008, you allege you submitted to the Court on or about October 16 a request for copies of records maintained by the Court. Specifically, you requested copies of a probable cause affidavit, a transcript, and an audio recording. You allege the Court denied you access the first two items because the case had been dismissed and failed to acknowledge the third item.

The Court responded to the complaint by letter dated November 21 from Judge Stephen M. Jessup. The Court contends that because the cause was dismissed on January 17, 2001, all requests thereafter have been determined to be moot. The Court contends you are not entitled to records at public expense once the cause has been dismissed. Further, the Court contends the file has been destroyed pursuant to approved procedures. The Court takes the same position regarding the transcript. Further, the Court contends that the case for which you have requested an audio recording has been re-assigned to Circuit Court. Finally, the Court contends that everything that was requested and that existed was already supplied to you through your attorney at the time of your appeal.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Court is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2(n). The Court contends that because the case at issue in your first two requests was dismissed, your requests are moot. This is not true under the APRA. Pursuant to the APRA, the public has the right to inspect and copy any public record of an agency unless the record is excepted from disclosure. *See* I.C. § 5-14-3-3(a). This is true whether a matter is open or is closed. Nothing in the APRA requires the agency to provide the records at no charge to you. The Court may charge copy fees in accordance with I.C. § 5-14-3-8.

Here, though, the Court contends the records have been destroyed pursuant to approved procedures. The APRA provides that public records subject to Ind. Code 5-15 may be destroyed only in accordance with record retention schedules under I.C. 5-15. *See* I.C. § 5-14-3-4(e). So long as the Clerk destroyed the records in accordance with a record retention schedule under I.C. 5-15, the Court has not violated the APRA in destroying the records.

Finally, the Court contends that everything you have requested has already been provided to you. Generally, if a person is entitled to a copy of a public record under the APRA and the agency has reasonable access to a machine capable of reproducing the record, the public agency must provide *at least one copy* of the record to the person. I.C. § 5-14-3-8(e), *emphasis added*. If the agency does not have reasonable access to such a machine, the person is entitled only to inspect and manually transcribe the record. An agency may require that the payment for copying costs be made in advance. *Id.* Here, the Court has previously provided you with a copy of the requested records. The Court has fulfilled its obligation under the APRA and is not required to provide you with additional copies.

CONCLUSION

For the foregoing reasons, it is my opinion the Court has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Judge Stephen M. Jessup, Howard Superior Court II