



STATE OF INDIANA

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March 4, 2009

Charles Richard Wilkins
DOC #985230
3038 West 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 09-FC-41; Alleged Violation of the Access to Public Records Act by the Marion Superior Court Criminal Division Four

Dear Mr. Wilkins:

This advisory opinion is in response to your formal complaint alleging the Marion Superior Court Criminal Division Four ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Court's response to your request was untimely. Further, the Court's denial should have included a statement of the specific exemption allowing or requiring the Court to withhold the requested records.

BACKGROUND

You allege that you sent to the Court a request for a copy of medical records of your daughter. The Court received the request on January 5, 2009, as evidenced by a date stamp at the top of your request form. The Court denied you access to the records, and you allege this is a violation of the APRA.

The Court responded to the complaint by letter dated February 10. Judge Lisa Borges confirms the Court received the request on January 5. The Court further indicates that the Court's Master Commissioner denied your request on January 13, having determined the medical records you requested were confidential. The Court acknowledges the response was not timely, and Judge Borges indicates she has instituted a policy to correct any potential late responses. Judge Borges includes a copy of a letter to you dated February 10 wherein the Judge indicates the records you requested are nondisclosable.

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(m). 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 request for records may be oral or written. 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 days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, the Court received your request on January 5 and responded to the request on January 13. As Judge Borges acknowledges, this response was untimely under the APRA. *See* I.C. § 5-14-3-9(b).

Regarding your specific request, the Court contends the records are confidential and as such the Court cannot disclose the records. While I do not question this assertion, I would remind the Court that a denial of access to a request which was made in writing must include a statement of the specific exemption(s) authorizing the withholding of all or part of the public record as well as the name and title of the person responsible for the denial. I.C. § 5-14-3-9(c)(2). I do not have a copy of the initial letter denying you access, but that letter should include a statement of the specific exemption(s) rather than a general statement that the records you have requested are nondisclosable.

CONCLUSION

For the foregoing reasons, it is my opinion the Court's response to your request was untimely. Further, the Court's denial should have included a statement of the specific exemption allowing or requiring the Court to withhold the requested records.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Judge Lisa Borges, Marion Superior Court Criminal Division Four