



STATE OF INDIANA

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April 18, 2011

Mr. Rocky M. Shroyer
4490 W. Reformatory Rd.
Pendleton, IN 46064

Re: Formal Complaint 11-FC-72; Alleged Violation of the Access to Public Records Act by the Grant Circuit and Superior Courts

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Grant County Circuit and Superior Courts ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Court's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you served a records request on the Court clerk on February 22, 2011. You sought to inspect and copy an affidavit of probable cause filed in *State of Indiana V. Troy Riggs*, Cause No. C102-FB-81. You claim that your request was "denied by way of an undated and unsigned Post-It note that stated, "Per Judges [sic] order we are not permitted to send this to you." You argue that the note fails to state a statutory exemption authorizing the Court's denial of your request.

In response to your complaint, Grant County Clerk Mark Florence (the "Clerk") states that his office received a request from you "regarding Troy Riggs, with an unknown cause number and charge of Child Molesting." The Clerk's staff obtained the appropriate cause number from the office's records and learned that the case was heard in court C1. The Clerk states that when his staff contacted that courtroom's judge to inquire about the subject of your request, the judge's staff informed the Clerk's staff to withhold the information.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. I.C. §

5-14-3-3(a). The Court is a public agency under the APRA. I.C. §5-14-3-2(1)(2)(C). If a public agency receives a request in writing, the public agency may only deny the request if the denial is issued in writing and includes the specific exemption or exemptions authorizing the withholding of the record, and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). A public agency bears the burden of showing that a record is exempt under the APRA. I.C. § 5-14-3-9(f).

Here, it remains unclear why the Court denied your request. The Court's denial merely stated that your request was denied in accordance with the judge's order, but it is unclear on what basis the judge made that decision. Because the Court's denial failed to cite to a statutory basis for withholding the record you requested, the Court did not comply with subsection 9(c) of the APRA. Consequently, it is my opinion that the Court has not yet sustained its burden to show that the record you requested is exempt from disclosure.

I note that under section 4 of the APRA, a public agency may not disclose records declared confidential by or under rules adopted by the supreme court of Indiana. I.C. § 5-14-3-4(a)(8). Confidentiality of court records is governed chiefly by Administrative Rule 9, which was adopted by the Indiana Supreme Court. The rule applies to court records, which is defined as both case records and administrative records. Admin. R. 9(C)(1). "Case record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case. Admin. R. 9(C)(2). All persons have access to court records as provided in Administrative Rule 9. Admin. R. 9(B)(1). However, some case records are confidential, pursuant to Administrative Rule 9(G). Administrative Rule 9 deems confidential information excluded from public access by specific court order. Admin. R. 9(G)(1)(c). Courts have the authority to seal court records in accordance with Ind. Code § 5-14-3-5.5. It is unclear whether or not the Court sealed the record you requested in accordance with this section of the APRA.

Moreover, it is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an "offender" for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure for information that could affect the security of a jail or correctional facility:

- Records requested by an offender that:
 - (A) contain personal information relating to:
 - (i) a correctional officer (as defined in IC 5-10-10-1.5);
 - (ii) the victim of a crime; or
 - (iii) a family member of a correctional officer or the victim of a crime; or
 - (B) concern or could affect the security of a jail or correctional facility.

I.C. § 5-14-3-4(b)(23). Thus, the Court would act within its discretion to withhold records that could affect the concern of a correctional facility. Again, however it is my opinion that the Court has not yet sustained its burden to show that the record you requested falls within this or any other exception to the APRA. *See* I.C. § 5-14-3-1. If the Court makes such a showing, the substance of the Court's denial has not violated the

APRA. In the absence of any applicable statutory basis for withholding the record, however, I encourage Court to release the record to you as soon as practicable.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court has not sustained its burden to show that the record you requested is confidential or otherwise nondisclosable under the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

cc: J. Mark Florence