



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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November 13, 2015

Mr. Keith Ware - #5265
Indiana State Prison
1 Park Row
Michigan City, IN 46307

Re: Formal Complaint 15-FC-265; Alleged Violation of the Access to Public Records Act by the Lake County Superior Court, Criminal Division Room 1

Dear Mr. Ware:

This advisory opinion is in response to your formal complaint alleging the Lake County Superior Court, Criminal Division Room 1 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Court has responded to your complaint via Magistrate Kathleen Sullivan. 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 September 28, 2015.

BACKGROUND

Your complaint dated September 28, 2015 alleges the Lake County Superior Court, Criminal Division 1 violated the Access to Public Records Act by failing to acknowledge your request.

On September 11, 2015 you requested a certified transcript from a case file. However, as of the filing of your complaint you had not received a response.

On October 2, 2015, the Court responded. The court first notes it did not receive your request. The Court stated it did not possess the case file in question. Due to the file's age, it had been placed in off-site storage. Additionally, it is estimated it would cost more than \$5 to create a certified copy of the transcript.

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



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of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Lake County Superior Court, Criminal Division Room 1 is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy the Court’s disclosable 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 that the request has been received and information regarding how or when the agency intends to comply.

The Court has stated it did not receive your letter and was unaware of your request until the filing of this complaint. Unfortunately, prison mail can sometimes be a casualty of the security protocols of the incarceration facility. In any case, the Court was made aware of your request as of the filing of your formal complaint.

The Court also stated the record is in off-site storage. It matters not whether the record is off-site or housed in an archive, the Court is the custodian of the record and has the obligation to fulfill a public records request. Nevertheless, Ind. Code § 5-14-3-3 states:

a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system.

To balance this consideration, Ind. Code § 5-14-3-8(e)(2) provides:

if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record.



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Therefore depending on the age and nature of the records you seek, it is subject to the Judicial Retention Schedules found in Rule 7 of the Indiana Administrative Court Rules. Regardless of the cost to search for and retrieve the record, costs associated with the transcription of the records are to be borne by the requestor and not the public agency. You would be responsible for paying a court reporter to transcribe the record if a transcribed record does not already exist. To the extent an audio recording does exist, the Court would be required to locate and retrieve the record, but not necessarily transcribe it pursuant to Ind. Code § 5-14-3-8. Please note there is no exception in the Access to Public Records Act for indigent inmates. I encourage the Court to explore whether the audio recording exists or has been transferred to the State Archives under Rule 7 and to update you on the status of its search. From there you may decide whether you want to pay for a transcribed copy of the recording.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Magistrate Kathleen Sullivan