



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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June 13, 2016

Mr. De'Shawn Redfield - #983601
Plainfield Correctional Facility
727 Moon Road
Plainfield, Indiana 46168

Re: Formal Complaint 16-FC-101; Alleged Violation of the Access to Public Records Act by the Madison County Clerk's Office

Dear Mr. Redfield:

This advisory opinion is in response to your formal complaint alleging the Madison County Clerk's Office ("Office") and Ms. Darlene Likens violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via the Honorable Angela Warner Sims and Mr. Jeffrey Graham, Esq. Their responses are enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 4, 2016.

BACKGROUND

Your complaint dated April 26, 2016 alleges the Madison County Clerk's Office violated the Access to Public Records Act by improperly denying your records request.

On February 24, 2016 you submitted a records request seeking records from the Office, including a court calendar and Chronological Case Summary files for cases set the same day as your case. On March 28, 2016 you received a denial stating your motion was denied for failure to comply with Trial Rule 11(A). This was also placed on your case's CCS.

On May 19, 2016 the Clerk's Office responded, stating its denial was proper under Trial Rule 11. Despite the denial, the Office attempted to locate the records you requested. The Office reached out to the Madison County Circuit Court in an effort to fulfill your request. The Office completed a search for records, which do not fall under Trial Rule 11 and contacted you on June 9, 2016 with a copy of the Summons for Jury Duty used by the Madison County Clerks.

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 of public officials and employees, whose duty it is to provide the information.” *See Indiana Code § 5-14-3-1*. The Madison County Clerk’s Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14- 3-3(a)*.

The records you requested are administrative court records and are likely not in the custody of the Clerk’s Office. Your request would need to be addressed directly to Madison Circuit Court 4 for the records you seek. It is unclear based on the information provided whether the Clerk acknowledged your request within seven (7) days and denied it based upon Indiana Code § 5-14-3-9.¹ The CCS entry denying your request is the only such documentation provided to this office.

Your request was conspicuously marked as a request for public records and not as a pleading or a discovery request under the trial rules or a motion to produce documentation. Therefore, I am curious as to why it was treated as a discovery device under the Trial Rules.

This office has stated on several occasions the Public Access Counselor will not interfere with the judiciary’s sovereign jurisdiction to adjudicate discovery requests under the trial rules. Indeed, the discovery process would be frustrated if an executive branch official were to preempt the court’s authority by issuing an opinion on production of documents.

However, your request was for administrative public records and not evidentiary documents from a litigant or third-party. The judiciary is subject to the APRA as if it were any other public agency. *See Indiana Code § 5-14-3-2(n)(2)(c)*. The fact litigation is occurring should not preclude you from requesting documents under the APRA. It is my opinion you have standing to request these records in a manner in which any other citizen may do so. Therefore, your request falls outside trial procedure or litigation and should be fulfilled. It is my hope the Court takes this opinion into advisement and reconsiders its position.

With regard to the Clerk’s Office, my opinion is no violation of the Access to Public Records Act has occurred save for the omission of an acknowledgement under Indiana Code § 5-14-3-9(b).

¹ A request for records may be oral or written. *See Indiana Code § 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 (7) days of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: The Honorable Angela Warner Sims
Mr. Jeffrey Graham, Esq.