January 2, 2008

Michael J. Stephens
128 Pinto Way
Bloomingdale, GA 31302

Re: Your informal inquiry regarding the Indiana Attorney General's office

Dear Mr. Stephens:

This is in response to your informal inquiry dated January 30, 2006. You initially sent the complaint to this office as a formal complaint. It was converted into an informal inquiry because it was untimely under Indiana Code §5-14-5-7. I apologize for the delay in the response. I took office July 1 of this year and a found a backlog of informal inquiries. I am currently endeavoring to address the backlog and issue opinions in response to the inquiries, pursuant to I.C. §5-14-4-10(5).

BACKGROUND

You originally filed your complaint as a formal complaint on January 30, 2006. Because it was considered untimely, your complaint was converted into an informal inquiry. You allege the Indiana Attorney General's office ("Attorney General") violated the Access to Public Records Act ("APRA") (Ind.Code 5-14-3) by denying you access to records. You faxed to the Attorney General a request for information regarding the number of legal cases in which an Indiana court or judge was the defendant and information regarding the number of cases initiated against an Indiana court or judge wherein the Attorney General defended the court or judge.

The Attorney General responded to your request by letter dated December 18, 2006. While the Attorney General does maintain the information you were seeking in an electronic management system, it is not maintained in the form you requested it. The Attorney General contends the APRA does not require the public agency to create a record or conduct research. The electronic management system contains confidential information which may not be disclosed. The Attorney General asked that either you pay for an independent contractor to reprogram the system to extract all nondisclosable information or provide your request with reasonable particularity.

You responded to this letter on December 26, 2006, stating you are primarilty interested in knowing how many judges in Indiana have been sued and how the suits were handled and settled. You also mention you are concerned primarily with Eklhart County Superior Court judges. Finally, you stated you would not pay to have the case management system reprogrammed and would only pay copy fees. As of January 30, 2007, you had not received a response to this letter.

DeAnna Brunner, Deputy Attorney General, responded to the complaint by letter dated February 7, 2007. She indicated the December 26, 2006 letter was never received by her office. Had her office received the letter, the response would have been the same to the response sent on December 18, 2006. She claims that in neither letter did you request information compatible with the way the agency's records are maintained.

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 Attorney General 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 Attorney General 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.

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 and the agency does not respond to the request within seven days, the request is deemed denied. I.C. §5-14-3-9(b).

The Attorney General claims your request was not made with reasonable particularity as required by I.C. §5-14-3-3(a). "Reasonable particularity" is not defined in the APRA. "When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself." *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). "Particularity" as used in the APRA is defined as "the quality or state of being particular as distinguished from universal." *Merriam- Webster Online, www.m-w.com*, accessed July 18, 2007. Here you have not requested particular records but instead have requested information like "the total number of legal cases . . ." and "the exact number of cost and expense of each case . . ." It is my opinion such a request for information rather than specific records does not identify the records sought with reasonable particularity as required by the APRA. I.C. §5-14-3-3(a).

The Attorney General also attests it has the information you are requesting, but does not maintain the information in the form you request it. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

When records or information are stored in an electronic database that may be manipulated and sorted, the public agency must make "reasonable efforts" to provide a copy of the data. I.C. §5-14-3-3(a). But when a record contains disclosable and nondisclosable information, the agency shall, upon receipt of a request, separate the material that may be disclosed and make it available for inspection and copying. *Id*. When the disclosable information is stored on a computer tape, computer disc, or similar record system, as seems to be the present case, and the agency must reprogram the system to separate the disclosable from nondisclosable data, the agency may charge the requester the agency's direct cost of reprogramming the computer system. I.C. §5-14-3-3(c). You have indicated you will not pay the costs of reprogramming the computer system to allow the Attorney General to redact nondisclosable information and provide you with the disclosable information. It is my understanding the records may not be provided as it currently exists because they contain nondisclosable data. As such, it is my opinion the Attorney General has not violated the APRA by refusing to reprogram the computer system at its own expense.

Best regards,

Heather Willis Neal

Heather Willis Neal
Public Access Counselor

Cc: Jean Marie Leisher, Office of the Attorney General