

March 27, 2008

Michael Jack Stephens
128 Pinto Way
Bloomington, Georgia 31302

Re: Formal Complaint 08-FC-76; Alleged Violation of the Access to Public Records Act by the Disciplinary Commission of the Indiana Supreme Court

Dear Mr. Stephens:

This advisory opinion is in response to your formal complaint alleging the Disciplinary Commission of the Indiana Supreme Court (“Commission”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records, namely a copy of a complaint and response filed with the Commission. A copy of the Commission’s response to your complaint is enclosed for your reference. In my opinion the Commission did not violate the APRA by denying you access to the requested records.

BACKGROUND

In your complaint you allege you requested by letter dated February 23, 2008 a copy of a complaint filed with the Commission against an attorney and the attorney’s response to the complaint. You further allege the Commission denied your request, indicating the rules of the Indiana Supreme Court governing confidentiality of investigative files in lawyer discipline matters prohibit the Commission from providing access to the records. You filed this complaint on March 5.

The Commission responded by letter from Executive Secretary Donald Lundberg dated March 4. Mr. Lundberg first indicates he does not concede that the legislative branch has the constitutional authority to control judicial branch decisions pertaining to the release of records (and I note the Commission has previously communicated such with this office after Counselor Hurst’s *Opinion of the Public Access Counselor 03-FC-139*). Regarding your request, though, Mr. Lundberg contends the records are excepted from disclosure because records declared confidential by or under rules adopted by the supreme court of Indiana may not be disclosed under the APRA. I.C. § 5-14-3-4(a)(8). Indiana Admission and Discipline Rule 23(22)(a) provides that “proceedings and papers related to matters that have not resulted in the filing of a

verified complaint shall not be open and available to the public.” Mr. Lundberg contends the records you requested are related to matters in the confidential stage of investigation.

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 Indiana Supreme Court is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(1)(1). I understand Mr. Lundberg’s argument regarding the question of constitutional authority of the legislative branch as it relates to the judicial branch. For purposes of this opinion, I am operating under the law as it has been passed by the legislature, that the judiciary is subject to the APRA, until or unless the question of constitutional authority is answered. Accordingly, any person has the right to inspect and copy the public records of the Commission 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 denial of disclosure to a request made in writing must be made in writing and must include a statement of the specific exemption(s) authorizing the withholding of all or part of the public record. I.C. § 5-14-3-9(c).

Here, the Commission responded to your request in writing. The Commission denied the request, indicating the records could not be provided “[u]nder the rules of the Indiana Supreme Court governing confidentiality of investigative files in lawyer discipline matters.”

The APRA excepts from disclosure records “declared confidential by or under rules adopted by the supreme court of Indiana.” I.C. § 5-14-3-4(a)(8). Indiana Admission and Discipline Rule 23(22)(a) states, “Proceedings and papers that relate to matters that have not resulted in the filing of a verified complaint shall not be open and available to the public.” Mr. Lundberg indicates that the records to which you refer relate to matters still in the confidential stage of investigation. It is my understanding a verified complaint has not been filed in the matter. As such, the records are required to be withheld from disclosure.

While the Commission’s denial letter did not provide the statutory provisions from which it derived the authority to withhold the records, and I generally recommend agencies provide the statutory citation, it is my opinion the Commission’s denial did include a statement of the specific exemption authorizing the withholding of all or part of the record, as required by I.C. § 5-14-3-9(c).

CONCLUSION

For the foregoing reasons, it is my opinion the Commission did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Donald Lundberg, Disciplinary Commission of the Indiana Supreme Court