

February 11, 2005

Eines Britton
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 05-FC-13; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion County Court

Dear Mr. Britton:

This is in response to your formal complaint alleging that the Clerk of the Marion County Court ("Clerk") violated the Access to Public Records Act by charging you an excessive fee to prepare your transcript. I find that the Clerk did not violate the Access to Public Records Act.

BACKGROUND

You filed your formal complaint after being charged a fee higher than \$.10 per page for copies of your transcript in Cause No. 49G02-0307-MR-120318. I forwarded a copy of your complaint to the Clerk. Ms. Chari Burke, Deputy Clerk of the Court responded by letter, which I enclose for your reference. Ms. Burke stated that your request was for preparation of the transcript, which the Clerk is not responsible for. Rather, the court reporter is authorized to charge a fee to transcribe the stenographic notes from a court proceeding.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours. IC 5-14-3-3(a). A public agency may charge a fee to **copy** a record, under Ind.Code 5-14-3-8. You have asked that a record be *created* which does not currently exist--a written transcription of a proceeding. You are not entitled under the APRA to have this record created for you. Rather, there are court procedures for requesting a transcript of a hearing. Ind. Appellate Rule 9. Any fee attendant to preparation of a transcription of a proceeding charged by the court reporter is outside the scope the Access to Public Records Act.

You have not sought a copy of an audio recording of the proceeding. However, I note that under Ind.Crim Rule 5, untranscribed recordings of a proceeding are a confidential court record. Under the Access to Public Records Act, a record declared confidential by rules adopted by the Indiana supreme court are not disclosable. IC 5-14-3-4(a)(8). Therefore, you would not be entitled to a copy of the untranscribed audio recording of the proceeding.

CONCLUSION

For the foregoing reasons, I find that the Clerk of Marion County did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Chari Burke