

February 6, 2006

Michael A. Sanders  
#100365 F-107-4  
Wabash Valley Corectional Facility  
P.O. Box 1111  
Carlisle, IN 47838

*Re: Formal Complaint 06-FC-8; Alleged Violation of the Access to Public Records Act by the Grant Circuit Court Clerk's Office*

Dear Mr. Sanders:

This is in response to your formal complaint alleging that the Grant Circuit Court Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records. I find that the Clerk responded appropriately.

#### BACKGROUND

On December 14, 2005, you sent a written request to the Clerk. You requested a copy of the audio disk of the jury trial and transcripts of the voir dire and sentencing hearings under a certain cause number. You claim that you received a response from Clerk Carolyn J. Mowery stating that you should submit your request to the Court. You filed your complaint with the Office of the Public Access Counselor on January 5, 2006.

I sent a copy of your complaint to the Clerk. She responded by letter, a copy of which is enclosed for your reference. Ms. Mowery stated that the Clerk did not violate the APRA, because transcripts of hearings and audio disks are maintained by the Court, not the Clerk. In the past, she has provided other records that the Clerk maintains, such as chronological case summaries and court orders.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency must issue a

response within seven (7) days of receiving a mailed request for a record. IC 5-14-3-9(b). If the public agency does not maintain the record, it should inform the requester, but otherwise, the public agency is under no obligation to secure the record from another office that is not under the jurisdiction of the public agency.

Under IC 5-14-3-4(a)(9), those records declared confidential by or under rules adopted by the supreme court of Indiana may not be disclosed. The Indiana Supreme Court has adopted Indiana Criminal Rule 5. Under Ind. Crim. Rule 5, when computer-aided transcription equipment is used to record oral matters in felony cases, a printed transcript shall be produced and maintained as a court record for fifty-five years. If a transcription of the recorded matters has not been prepared, certified and filed in the criminal proceeding, the electronic recording of all oral matters, together with a log denoting the individuals recorded and meter location of crucial events, or floppy disk and stenographic paper notes, shall be maintained as a confidential court record for ten years in all misdemeanors or fifty-five years in all felony cases.

I do not find your formal complaint meritorious. First, the Clerk directed you to petition the Grant Circuit Court for a transcript and a copy of the audio disk. The Clerk does not maintain the records you seek. Therefore, the Clerk has not violated the APRA.

The court reporter assigned to the Court would prepare a transcript under the trial or appellate rules applicable to the preparation of transcripts. You are not entitled to preparation of a transcript under the APRA. This is because a transcript is a new record, and a public agency is not required to create a new record that does not exist. You may be entitled to a transcript if you make proper arrangements with the court reporter, but you are not entitled to a transcript under the APRA. Further, it appears that under rules of the Indiana Supreme Court, a copy of an audio disk of a felony matter is a confidential court record.

I recommend that you contact the Grant Circuit Court to request a transcription of all matters related to your petition for post conviction relief.

#### CONCLUSION

For the foregoing reasons, the Grant Circuit Court Clerk did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Carolyn J. Mowery