

June 14, 2006

Tracy Hertel
138 Altgeld Street
South Bend, IN 46614

Re: Formal Complaint 06-FC-84; Alleged Violation of the Access to Public Records Act by the St. Joseph Superior Court

Dear Mr. Hertel:

This is in response to your formal complaint alleging that the St. Joseph Superior Court (“Court”) violated the Access to Public Records Act by denying you court records. I find that the Court did not violate the Access to Public Records Act.

BACKGROUND

You filed your formal opinion with the Office of the Public Access Counselor on May 15, 2006. You allege that you were denied access to court records regarding a number of cases in the Court. In particular, you complain that the transcripts that you requested over a year ago were not produced within a reasonable period of time, resulting in a denial of access. In addition, you allege that the Court has denied you the right to a copy of the audiotape, by failing to respond to your mailed request within seven days.

In support of your complaint, you sent a chronology of correspondence related to court transcripts for cause #71D08-0409-FA-00096. You state that you sent on April 25, 2006 a request for access to the original audiotapes pertaining to the two court dates for which you had transcripts. You allege that your counsel had contacted Judge Chamblee, the presiding judge, who you allege had told your counsel on May 1 that the audiotapes were not public record. However, you also claim that by May 4, the Judge had told your counsel that the audiotapes were disclosable public records, and that the court reporter who had produced the transcripts was attempting to copy the recordings on either CD-ROM or on magnetic tape.

I sent a copy of your complaint to the Court. Judge R.W. Chamblee responded by letter. I have enclosed a copy of his letter for your reference. Judge Chamblee denies telling you or your counsel that the audiotope was not a public record. The Judge referred to his May 10 letter to you stating that the Court was determining not *whether* you would be allowed to review the audiotapes, but *how*. Because of the nature of the recording equipment used by the courts, providing you with a copy directly from the machine would not allow you to play it on any normal device. The Judge stated that the court reporter for the Circuit Court was in the process of attempting to make a copy that would be of use to you, on either on CD-ROM or tape. Once it was determined how the copy could be made, you would be notified.

I have reviewed my own records concerning this matter. My records show that, on Judge Chamblee's initiative, I had communicated with Judge Chamblee on May 1 regarding the Supreme Court's guidance on the issue of providing access to audiotapes of court proceedings. I sent the Judge a link to the Supreme Court's *Public Access to Court Records Handbook*.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). A court is a public agency under the APRA. IC 5-14-3-2(l). A public agency that receives a request for a record via U.S. Mail is required to respond to the request within seven days of receipt, or the request is deemed denied. IC 5-14-3-9(b). No specific time is required under the APRA during which a public agency is required to produce a record. I have stated that the public agency should produce the record within a reasonable period of time, under the circumstances. If a person requests a record that does not exist, the public agency is not required to create the record under the Access to Public Records Act. If the public agency agrees to produce a record that does not already exist, the time within which the record is created is not governed by the APRA.

Hence, with respect to that part of your complaint taking issue with the period of over one year to receive the transcripts of your court hearings, I decline to find any violation of the APRA. The APRA simply does not govern the production of transcripts from a court reporter's recordings or notes, because the transcript is not an already-existing court record.

You also allege that the Court violated the APRA because it failed to issue a timely response to your request for a copy of the audiotapes. You allege that the Court received your April 25 request on April 27. Hence, you believe that the Court's letter to you of May 10 was a tardy response. However, the Court clearly communicated with you or your representative (your counsel) about the request prior to the letter of May 10. Although you allege that on May 1, the Court told your counsel it would deny your request, Judge Chamblee disputes this version of events. By your own chronology, you state that by May 4, Judge Chamblee had indicated to your counsel that the audiotope would be reproduced by a yet-undetermined means. This seems consistent with my communication with Judge Chamblee on May 1 in which we discussed the guidance contained in the Handbook concerning audiotapes.

The response contemplated by IC 5-14-3-9(b) is an acknowledgment that the public agency has received the request, and some indication of how and when the agency intends to

comply. Given the Court's concern that normal means of reproducing the audiotape would not afford you the ability to play it back on normal equipment, the Court's indication that it was exploring ways to reproduce the tapes was fully consistent with the duties imposed on a public agency by the Access to Public Records Act. This communication occurred by May 4, within the seven-day time for response.

It is my opinion that your complaint that the Court is denying you access to the audiotape is without foundation. I encourage you to request records that you need, but to observe that the Court must regulate any material interference with its other functions and duties. *See* IC 5-14-3-7(a). Further, if you believe that you will be able to utilize a magnetic tape that has reproduced the original recording at the high speed at which the original recording was made, then I recommend that you communicate this to the Court. In this way, it may allow the Court to make the audiotape without special equipment, and would allow you to receive the audiotape sooner.

CONCLUSION

For the foregoing reasons, I find that the St. Joseph Superior Court has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Judge R.W. Chamblee, Jr.