

February 6, 2006

Sent Via Facsimile

Robin E. Hughes
P.O. Box 681293
Indianapolis, IN 46268

Re: Formal Complaint 06-FC-9; Alleged Violation of the Access to Public Records Act by the Marion Superior Court 7

Dear Ms. Hughes:

This is in response to your formal complaint alleging that the Marion Superior Court 7 (“Court”) violated the Access to Public Records Act (“APRA”) by failing to produce certain records.

BACKGROUND

On November 10, 2005, you sent a written request for records to the Court. The copy of your request indicated that the request was filed with the Court on November 28, 2005. You requested to inspect and copy certain records under cause number 49F070101CM01586:

1. State’s Exhibit “A”—Damaged Door
2. State’s Exhibit “B” – Damaged Truck
3. State’s Exhibit “C” – 911 Tape (Inspection and copying)
4. Bench Trial Tape and Inspection that Occurred on March 2, 2002.
5. All documents presented into evidence at Sentencing Hearing under the above said cause number held before this Court April 2005.

You allege that the court set a hearing on December 6, 2005, but the hearing was cancelled. You filed another request for identical records with the Court on January 6, 2006. You allege that since December 6, you have had no other communication from the Court. You filed your formal complaint with the Office of the Public Access Counselor on January 6, 2006.

I sent a copy of your complaint to the Court. Mark F. Renner, Marion Superior Court Administrator, responded by letter. I have attached a copy of the letter for your reference. Mr. Renner explained that you have received many of the documents that you requested in your November 10 request. You received, on May 30, 2004, a complete transcript of the court trial in your case. That transcript included copies of the Exhibits A and B and all subparts. You also received a transcript of the 911 tape. Mr. Renner understands that you now have obtained a copy of the actual 911 tape from the Metropolitan Emergency Communication Agency.

On July 30, 2004, you received the sentencing transcript. Within that transcript, according to Mr. Renner, were all the documents admitted into evidence which you sought under item #5 of your November 10 request. A copy of the tape of the sentencing hearing may not have been included. There was no intent to deprive you of the right to inspect, or listen to the tape, but the Court was confused by your request for the tape "and inspection." The Court is making a copy of the tape for you and will make it available if that is what you are seeking.

The Court had scheduled a hearing in order to learn what still remained for the Court to disclose, if anything. The hearing had to be continued, and the filing of your complaint leaves the hearing unscheduled.

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). The Court is a public agency under the APRA. IC 5-14-3-2(l)(1). Hence, any record that is created, received, retained, maintained, or filed by or with the Court is a public record, and must be disclosed unless it is exempt. *See* IC 5-14-3-2(m). A request for a record must identify the record with "reasonable particularity." IC 5-14-3-3(a)(1).

Certain court records are exempt because they are declared confidential by or under rules adopted by the supreme court of Indiana. IC 5-14-3-4(a)(8); *See* Admin. Rule 9(G). Your complaint and the response filed by the Court do not raise any issues regarding whether any of the requested records are exempt. It appears that the only issue is whether the Court has complied with your request.

A public agency must provide at least one (1) copy of a public record to a person. IC 5-14-3-8(e). However, the court is not required to supply you with multiple copies of the same record. The Court has averred that you have been provided items #1-3 and #5 of your request. If you believe that you have not been provided with any of the records, your remedy is to file a lawsuit to compel disclosure of the records. *See* IC 5-14-3-9(e).

The Court has stated that you may not have received a copy of the tape from the bench trial (your item #4). I agree that your request is not stated with perfect clarity; however, when a public agency believes that a request is not stated with reasonable particularity, it should seek clarification directly from the requester. Because the Court provided you with a transcript of the bench trial rather than the tape itself, you may have wished to clarify your request to make it clear that you wanted to listen to the tape (inspect it), rather than receive a copy of the transcript.

Mr. Renner indicated that with respect to your request to inspect the 911 tape, you had questioned the tape's authenticity. In response to your complaint, an investigator from the Indiana Supreme Court had examined the tape. Mr. Renner does not state what the findings of the investigator were, but in any case, he states that you have secured a copy of the tape from the Metropolitan Emergency Communication Agency.

If the tape of the 911 call (rather than a mere transcription) was contained in the case records of the Marion Superior Court, you had a right to inspect it or obtain a copy of it. The fact that you have obtained a copy of the original 911 call from the emergency management agency that apparently created it does not mean that the Court is not required to allow you the right to inspect or copy the 911 tape in its case records, subject to a court order respecting that particular record. *See* Admin. R. 9(G).

CONCLUSION

For the foregoing reasons, I find that you have the right to inspect or copy the 911 tape and the tape of the bench trial. If the Court previously provided the other documents in your November 10 request, you are not entitled to additional copies under the APRA.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mark F. Renner