

July 30, 2007

Tyrone Frazier
DOC # 910476
Indiana State Prison
PO Box 41
Michigan City, Indiana 47361

Re: Formal Complaint 07-FC-185; Alleged Violation of the Access to Public Records Act by Marion Superior Court Criminal Division Nine

Dear Mr. Frazier:

This is in response to your formal complaint alleging the Marion Superior Court Criminal Division Nine ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying your request for records. A copy of the Court's response to your complaint is enclosed for your reference. I find that because the Court has offered to provide a certified transcript of the record you requested, the Court did not violate the APRA.

BACKGROUND

Your complaint alleges you submitted a request for a copy of the audio recordings of proceedings involving you on March 30, 2001 and December 29, 2000. Your requested was dated June 13. You included with your complaint a copy of a memorandum from the Court dated June 20, denying your request for copies of the audio tapes. The Court indicated you could obtain a transcript of the proceedings by filing a Praecipe with the Court and requesting indigency status. You filed your complaint on June 28 and submitted a copy of the denial on July 2.

The Court submitted a response to your complaint on July 3. In its response, the Court described the denial in its June 20 memorandum. The Court further described the precedent established by the Court denying providing copies of tapes or disks because of the expense involved and the number of courts which would be affected by such a precedent. The Court further indicated it would bring the matter to the Executive Committee of the Marion County Superior Courts.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2.

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

The Court is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

I will note your initial complaint was mailed to this office by you on June 26, 2007. As I have done in the past, I will again urge you to remember that it takes longer for mail to get through the prison mail system than it does to get through the regular U.S. Mail system. As such, I believe you sent your complaint to this office before the response from the Court had time to reach you.

Your initial request for records was dated June 13. The response from the Court was sent to you on June 20. I do not have evidence indicating the date the Court received your request. However, the APRA allows a public agency seven days from the date of receipt of the request to respond. I can assume the Court responded within seven days of receipt of your request since the response was dated seven days from the date you sent the request. As such, the Court’s response was timely under the APRA.

The issue of access to tape recordings of court proceedings has been addressed by the previous public access counselor in *Office of the Public Access Counselor Formal Opinion 06-FC-199*. As indicated in that opinion, a court is required to withhold a record that is declared confidential by or under rules adopted by the Supreme Court of Indiana. IC 5-14-3-4(a). The Indiana Supreme Court has adopted Administrative Rule 9, governing disclosure of court records. Administrative Rule 9 does not specifically limit access to tape recordings of court proceedings.

According to the *Public Access to Court Records Handbook*, Appendix D, recordings of court proceedings made by court reporters are public records regardless of how the information is stored. *Public Access to Court Records Handbook, Indiana Supreme Court, December 2004*. The public has the right to obtain the record within a reasonable period of time. According to the *Handbook*, a person may obtain a copy of the recording. Requiring the person to purchase a transcript of the hearing may be so costly as to constitute a denial of access to the record. *Id.* at

page 48. In this case, though, the Court has suggested if you are granted indigency status, you will be able to receive a copy of the transcripts of the proceedings you request at no charge.

The *Handbook* further indicates that a specific means of providing this type of record has not been defined, but the time or difficulty of compliance is an important consideration. *Id.* The policy as set out in the *Handbook* is consistent with the APRA. And the Court here is following the guidelines established by the Indiana Supreme Court in the *Handbook*. The Court has offered to provide you a copy of the transcript of the tape recordings after consideration of the time and difficulty related to compliance.

CONCLUSION

For the foregoing reasons, I find that the Marion Superior Court Criminal Division Nine did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: The Honorable Heather A. Welch, Judge