STATE OF INDIANA

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November 5, 2013

Mr. Jesse Clements
P.O. Box 68082
Indianapolis, IN 46268

Re: Formal Complaint 13-FC-293; Alleged Violation of the Access to Public Records Act by Marion Superior Court 5

Dear Mr. Clements,

This advisory opinion is in response to your formal complaint alleging that the Marion Superior Court 5 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Court has responded to your complaint by way of Ms. Andrea Brandes Newsom. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 8, 2013.

BACKGROUND

Your complaint dated October 8, 2013, alleges that the Marion County Superior Court 5 violated the Access to Public Records Act by charging a fee for records exceeding that which is authorized by Ind. Code § 5-14-3-8 and Marion County Local Rule LR49-AR15-307(B)(11).

You allege that on or about September 30, 2013 you were advised by a Marion County Court reporter that records responsive to your September 27, 2013 request would be made available to you for an associated fee of Fifty Dollars ($50.00). You sought an electronic copy of an August 7, 2013 hearing recording and the Court stated the file exceeded the capacity of one compact disc and would need two discs on which to fit the data. Under the Local Rule, a single compact disc carries a charge of Twenty-Five Dollars ($25.00)

After being advised of the $50.00 charge, you petitioned the Court for relief on October 3, 2013. In your letter to the Hon. Judge Altice, you accused the Judge of "purposefully and willfully trying to block access to recordings that demonstrate your unfitness to be a

judge."[1] In that same letter you also contended that "No one, not even a Marion County judge, who per Gov. Daniels has purchased their office, can create arbitrary blocks to inhibit or punish someone for accessing public records."[2]

Judge Altice reaffirmed the Court's position of a $25.00 charge per disc in an October 3, 2013 court order. This was an order you characterize as being written by a "typical Lawless [sic] irrational Marion County Judge at work".[3] Additionally, you were required to sign an acknowledgment. It is not clear from your complaint what kind of acknowledgement was requested of you other than you considered it to be "LAWLESS"[4]. Your complaint does not allege the acknowledgement prejudiced your access in any way.[5]

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Marion County Superior Court 5 is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Court's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Court does not deny you are entitled to the records you seek. There seems to be no dispute they provided you with an opportunity to inspect the records in a timely manner. The dispute has arisen over the proposed fee they attempted to charge you for the recordings in an electronic format.

In relevant part, Ind. Code § 5-14-3-8(g) states that for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency

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[1] APRA Request at 2.
[2] *Id.*
[3] Formal Complaint at 1.
[4] *Id. emphasis not added.*
[5] The acknowledgement issue has been addressed by previous Public Access Counselor Hoage in 13-FC-50. That Opinion is incorporated by reference. Your assertion in your formal complaint that the Opinion is tainted by a "conflict of interest" and "should be viewed with suspicion" is wholly disregarded. Counselor Hoage's subsequent recusal from Marion County APRA matters had not yet taken effect.

may charge a fee, uniform to all purchasers, that does not exceed the sum of the following: (1) The agency's direct cost of supplying the information in that form. (2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

Accordingly, Marion County Local Rule LR49-AR15-307(B)(11) states that:

> The maximum fee a Court Reporter may charge for preparing a Compact Disc recording of a proceeding is Twenty-five Dollars ($25.00).

You have not alleged the Court has charged you a fee it does not charge other individuals. Likewise, the actual cost of the preparation of the CD has not been determined. You argument hinges on the language of the local rule itself.

Your point is well-taken that the local rule could be considered ambiguous in that, the indefinite article "a" could modify both "Compact Disc" and "recording". Your contention is that "Compact Disc" is the adjective in the sentence and "recording" is the noun modified by both "a" and "Compact Disc".

The Court argues that even though there was only one proceeding, there are two recordings; therefore, justifying a $25.00 charge *per disc*. Note the local rule doesn't quantify either of the nouns "recording" or "proceeding". The preposition "of a" shows the relationship between the recording and the proceeding.

There are legitimate arguments on both sides and this is not an exercise in grammatical semantics; as both contending arguments are meritorious, the situation warrants an exploration into statutory construction. We turn to *Green v. Hancock County Bd. of Zoning Appeals,* 851 N.E.2d 962 (2006):

> When interpreting an ordinance, courts will apply the same rules as those employed for the construction of state statutes. Foremost among those rules is the directive to ascertain and give effect to the intent of the legislature. Indispensable to this effort is a consideration of the goals sought to be achieved and the reasons and policies underlying the statute, requiring a view of the statute within the context of the entire act, rather than in isolation. A legislative enactment cannot be presumed to be applied in an illogical or absurd manner, inconsistent with its underlying goals.

Taken to the conclusion you suggest, it stands to reason that if a particularly long proceeding would necessitate several compact discs, then a Court reporter could only charge $25.00 total even though the cost would outweigh the fee. This would be a result surely not intended by the rule makers. The quasi-legislative body promulgating the Marion County local rules enacted the rules to reflect actual cost of materials. For example, they identify printed copies of transcripts as charged on *a per page* basis. It is not unreasonable to interpret the ordinance in subsection 11 as *per compact disc*.

Extraordinary fees place a significant barrier in the way of public access. It is recognized an open government is one that disseminates information in the least restrictive manner. That being said, a government can also be a good steward of transparency if the fees charged for copies are reasonable in nature and are related to the normal course of business. Of course the public agency should be particularly mindful that any fee charged should be consistent in regard to all requests for information.

Once again, your complaint and original request for records includes unnecessary and inflammatory language. Even though you state them as truth, this makes cutting through to the substantive public access issues in your formal complaint very difficult. My role is to advise the public on open access matters. Part of that duty is to issue opinions as to how citizens and public agencies can work together and resolve disputes cooperatively and civilly. When either party is needlessly antagonist toward another, problems inevitably arise. This does not place the sole burden on the public, but rather I would caution agencies to be similarly respectful toward their constituents. As you have made public records complaints in the past (and are certainly invited to do so in the future), I urge you to contextualize your complaint consistent with basic civility and clear language.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Marion County Superior Court 5 did not violate the Access to Public Records Act.

Regards,

Luke H. Britt
Public Access Counselor

Cc: Ms. Andrea Brandes Newsom