
OPINION OF THE PUBLIC ACCESS COUNSELOR

TINA SCOGGINS,
Complainant,

v.

CLARK COUNTY CLERK,
Respondent.

Formal Complaint No.
17-FC-195

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Clark County Clerk of the Circuit Court (“Clerk”) violated the Access to Public Records Act¹ (“APRA”). Clark County attorney R. Scott Lewis filed a response in this matter on behalf of Clerk Susan Popp. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 16, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Tina Scoggins (“Complainant”) filed a formal complaint alleging that the Clerk violated the APRA by improperly denying her access to a copy of a court recording, failing to timely respond to her request, and attempting to charge her for a transcript.

Scoggins sought an audio recording of a court proceeding that occurred on December 29, 2016 in Clark Circuit Court III. Scoggins acknowledges she initially submitted the request directly to the court on July 24, 2017. She claims that she redirected the request to the Clerk’s office after the court staff told her that all records requests must be filed with the Clerk’s office. That same day, Scoggins asserts that she hand-delivered her records request to the Clerk’s office. Notably, the Complainant did not include a copy of the request with her formal complaint to this Office.

On July 26, 2017, Scoggins emailed the Clerk to follow up on the request, and declared that the law required the Clerk to issue a written response to her within 24 hours because she hand-delivered the request to the Clerk’s office. After receiving no immediate response to her email, Scoggins made additional unsuccessful attempts over the next two days to connect with the Clerk by visiting the office and leaving voicemails.

On July 28, 2017, the Clerk responded to Scoggins by email. The Clerk’s response, in relevant part, stated the following:

I have been out of the office due to the arrival of my first grandchild. This email is serving as a response to your records request. I will provide the

record as requested. I will have it to you next Friday 08/04/17.

Three days later, Scoggins requested the Clerk provide the audio recording two days sooner on August 2, 2017, because Scoggins was scheduled to leave town.

On August 1, the Clerk emailed the following response:

I am still checking with the court's response vs. the record commission. The Court will provide copies of the transcripts only. Again, I am waiting for further clarification.

Scoggins responded to the Clerk via email two days later. In that email the Complainant suggested the Clerk contact this Office on the issue and attached two advisory opinions from previous Public Access Counselors for review.

Scoggins then cautioned the Clerk that procuring the requested audio recording was a function of the Clerk's office, and the Clerk would be responsible for explaining the Complainant's insinuation that the clerks of the individual courts are unified in an effort to mislead the public into paying outrageous amounts of money for transcripts.

Scoggins then demanded the Clerk provide the audio recording the following Monday. She wrapped up her email harangue by questioning the Clerk's fitness for office and her knowledge of the law, the requirements of the Clerk's office, and the Clerk's obligations to the public. Scoggins also insisted that the birth of a grandchild does not excuse the Clerk's office in a complaint for violating APRA.

On August 9, 2017, the Clerk informed Scoggins by email that she was still working on the request, and asked Scoggins give her until the end of the day. The same day, the Complainant informed the Clerk that she had sent a formal complaint to this Office because there had been seven days of non-response, which constitutes a denial of the request. Later that night, Scoggins sent another email to the Clerk asking for an update on the status of the request, and noted her confusion about why the Clerk had not provided the requested record.

The Clerk denies that a violation of APRA occurred in this case, and argues that the Complainant's access to any audio recording of a court proceeding is a matter that directly involves the respective judge and court staff, not the Clerk.

First, the Clerk notes the distinct legal difference and separation between the Clark County Clerk and the Clark County courts. The Clerk contends that even though her office is designated Clerk of the Courts, the individual courts and their staffs are administered and controlled exclusively by the independently elected judges. Plainly stated, the Clerk has no control or authority over the judges or the court staffs.

Next, the Clerk argues that even though she was out of the office on the day of the request, the staff who received Scoggins request in the Clerk's office did acknowledge receipt of the request and advised the Complainant that the request would be handled within a reasonable time period. Even so, the Clerk acknowledges confusion as to which office the request was actually directed because Scoggins told her staff that the request was intended for Judge Weber and Clark Circuit Court III. The Clerk claims she believed the request

was not directed to her office because it involved an audio recording.

Moreover, the Clerk argues the nature of the request is significant because her office does not maintain, possess, or have any control over the audio recordings of any court proceedings. Specifically, the Clerk asserts that audio recordings of court hearings are distinguishable from case documents (i.e., pleadings, motions, etc.) that are maintained by the Clerk's office. Therefore, the Clerk could not, and cannot provide the Complainants with a responsive record.

ANALYSIS

The public policy of 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." Ind. Code § 5-14-3-1. The Office of the Clark County Clerk is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the Clerk's disclosable 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).

The Complainant argues the Clerk failed to answer her request in writing within 24 hours of her hand-delivering the request to the Clerk's office.

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). Here,

the parties agree that the Complainant hand-delivered a records request to the Clerk's office on July 24, 2017. The dispute is the adequacy of the Clerk's response to the request.

While a paper receipt is encouraged to serve as an acknowledgment, it is not required. An in-person transaction could very well suffice as a contemporaneous acknowledgment exchange and satisfy the requirements of the law. So long as a requester actually receives the requested record within a reasonable amount of time, the acknowledgment, to a certain extent, is a formality, albeit an important one.

The Clerk argues—and I agree—that there is a distinct legal difference between the Office of the Clark County Clerk and the courts. Specifically, the Clerk points out that the courts and their respective staffs are administered and controlled exclusively by the independently elected *judges*, not the county Clerk. This can be confusing because courts sometimes have a “clerk” on staff. The bottom line is the Clerk does not have control or authority over judges or the court staff.

Based on the evidence submitted to this Office, it is clear that the Complainant—despite the litany of impolite, patronizing emails she sent to the Clerk declaring personal knowledge of the law while insinuating the Clerk's ignorance—fundamentally misunderstands the Clerk's duties under APRA in this case. It is certainly understandable why the Clerk would want to procure the guidance of the local records commission before proceeding.

To wit, a court has lone discretion to prescribe methods as to how an audio recording is accessed. The Access to Public Records Act and the Administrative Court Rules strongly

favor access with a presumption of disclosure. Pursuant to Administrative Court Rule 9(D)(4), a Court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with Indiana Judicial Conduct Rule 2.17.

The administrative rule and Judicial Conduct Rule 2.17 alludes to restrictions on the method of access *during the pendency of the case*. It stands to reason a judge would want to ensure the integrity of the case by preventing broadcast or alteration of the case while it is being adjudicated.

In the present case, the audio requested was from a December 2016 court date. Therefore, the proceedings are in no danger of being compromised or tainted. The threat of alteration is of little consequence as the court retains the original recording as the official record of the trial and subsequent proceedings. Post-adjudication, distributing copies upon request poses little-to-no possibility the veracity of the proceedings would be compromised.

That said, audio recordings are a routine request made of courts. Court staff should be as familiar with the Access to Public Records Act as any other civil servant. While the County Clerk is the custodian for official court records in the court file (motions, pleadings, orders, etc.), a recording of proceedings is an in-house administrative file typically maintained by the court itself. Transcripts usually are not prepared unless a court orders it and the release of an audio recording will often substitute for that expensive process. This would not be necessary for a simple public records request for an audio recording after adjudication is complete.

Ultimately, I suggest that a fifteen day delay in the production of records (for a six-month-old proceeding – undoubtedly not a time-sensitive matter) does not warrant such a vociferous display of frustration toward a public official. Was there confusion on the part of the Clerk regarding the procedure for releasing audio recordings? Perhaps. But confusion is not tantamount to intentional obfuscation. All told in my experience, a degree of patience and a modicum of diplomacy often yields better results.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Clark County Clerk has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor