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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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PAMELA K. WEBER,  
*Complainant,*

v.

GIBSON COUNTY CLERK,  
*Respondent.*

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Formal Complaint No.  
17-FC-209

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Gibson County Clerk (“Clerk”) violated the Access to Public Records Act<sup>1</sup> (“APRA”). The Clerk has responded via Hon. Judge Robert Krieg of the Gibson Superior Court. 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 29, 2017.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## **BACKGROUND**

Pamela K. Weber (“Complainant”) filed a formal complaint alleging that the Clerk violated the Access to Public Records Act by wrongfully denying her a copy of a court recording.

On August 28, 2017, Weber and John Alstatt went to the Court’s office and requested copies of audio recording from the Clerk’s Office. She was told the audio records could not be obtained and a transcript would have to be prepared instead.

On September 1, 2017, the Honorable Robert Krieg—judge of Gibson Superior Court—filed a response on behalf of the Court. Judge Krieg disputes that the Court violated APRA in this case. The Judge had recused himself from all matters regarding the Complainant and is not the decision maker whether the recordings could be released to her.

## **ANALYSIS**

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 Gibson County Clerk and Superior Court are public agencies 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 and Court’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a). A public agency is required to make a response to a written request

that has been mailed within seven (7) days after it is received. Ind. Code § 5-14-3-9(c).

A court has 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 recordings in question do not appear to be particularly sensitive. It should be a routine matter to release them. In light of the recusal of the Judge, however, the Complainant's would need to obtain authorization from the special judge assigned to the case. Because the law and court rules strongly favor public inspection, they should be released upon request. Typically, there does not need to be a transcript prepared or any special proceeding to hear the matter. A simple order from the court will suffice.

The Court has not offered any indication the records were in jeopardy of being distorted or misrepresented. With a presumption of full disclosure, both the APRA and the Court Rules favor access. Audio recordings are regularly released to the public and the Clerk nor Court has offered no indication as to why they are justified in withholding them. Based on conversations with the Complainant, it appears as if there is some confusion whether Gibson County recorded proceedings at all. This Office confirmed they do and should be compiled and released upon request. It should be noted

Complainants would bear the actual cost of the medium upon which they are downloaded, be it a flash drive or CD.

### **RECOMMENDATION**

I strongly recommend the Clerk and Court revise its position in this case and release a copy of the audio recording to the Complainant at the earliest possible opportunity.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor