



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
Toll Free: 1-800-228-6013
Email: pac@in.gov/opac
Website: www.IN.gov/pac

OPINION OF THE PUBLIC ACCESS COUNSELOR

WALTER E. LUNSFORD

Complainant,

v.

HANCOCK SUPERIOR COURT 1

Respondent.

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17-FC-112

ADVISORY OPINION

June 26, 2017

This advisory opinion is in response to the formal complaint alleging the Hancock Superior Court (“Court”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1–10. The Court responded on May 23, 2017. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 15, 2017.

BACKGROUND

The Complainant filed a formal complaint alleging the Court violated APRA by not completely fulfilling his records request. On March 20, 2017, Lunsford requested—in person—copies of the audio recordings of two separate court hearings. The Complainant contends that the court staff informed him that the recordings were not public records and that he would need to request and pay for transcripts of the hearing to be created at a cost of five dollars per page. The Complainant further alleges that the Court also denied his request to listen to the audio.

On March 24, 2017, the Complainant hand delivered a request to the Hancock County Clerk, requesting audio recordings from the two court hearings. The Clerk responded to his request by phone later the same day. The Clerk informed the Complainant that the Hancock County Clerk was not in possession of the requested audio recordings, and that the Clerk had forwarded the Complainant’s request to the Court.



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On March 27, 2017, the Complainant stated that he again visited the Court, this time to ask about the records request forwarded by the clerk. As before, the Court's staff declared that the audio recordings were not public records, denied him the opportunity to listen to the recordings, and directed the Complainant to request a transcript, which would be provided to him at a cost. Lunsford asserts that the Court staff refused to provide him with a written denial because his written request had been fulfilled by the Hancock County Clerk. The Complainant also alleges that the Court staff would not provide him with any of their names.

On April 6, 2017, the Complainant hand delivered a written request to the Court, this time requesting audio recordings for three separate hearings. Lunsford stated that the Court staff refused his request and directed him to the Hancock County Clerk. The Complainant said he called the Court on April 10, 2017, to ask if the recordings were ready, and he was again told that the Court would not fulfill his request. On April 12, 2017, Lunsford returned to the Court to discuss his request and the Court confirmed that the recordings would be available for pick up the following day. The Complainant picked up the recordings on April 13, 2017.

One of the recordings the Court provided to the Complainant was an incorrect hearing, and another of the recordings was "garbled." The Complainant called the Court on April 14, 2017, to notify the Court of the issues with two of the recordings. The staff said that they would consult the information technology department ("IT") and notify the Complainant about the recordings. Lunsford called the Court on April 27, 2017, to ask if the recordings were ready. The Court said that the recordings were not ready and did not provide an estimate on when they would be ready. He followed up again on May 1, 2017, and the Court told him that the Court would not give him the recordings. The Complainant stated that the employee he spoke to on the phone refused to provide a name.

The Complainant filed a complaint with this Office dated May 11, 2017, which was received on May 15, 2017. This office notified the Court of the complaint on May 16, 2017. The Court explained the delay in sending the correct recording to the Complainant by responding that the county has only one IT employee who had been on vacation for two weeks. The Court also stated that it has "no control over quality" of recordings and suggested that the "garbled" recording is just "a fact of electronic recordings." Notably, in its response, the Court did not dispute any of the allegations made by the Complainant regarding his interactions with the Court staff and did not reference any of the Complainant's requests prior to the written request the Complainant delivered on April 6, 2017.



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ANALYSIS

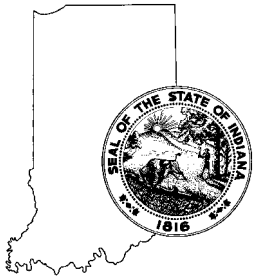
The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Indiana Code § 5-14-3-1. The Hancock Superior Court 1 is a public agency for the purposes of the APRA. *See* Indiana Code § 5-14-3-2(n). Accordingly, any person has the right to inspect and copy the Hancock Superior Court 1's disclosable public records during regular business hours unless the records are nondisclosable as confidential or otherwise exempt under the APRA. *See* Indiana Code § 5-14-3-3(a). Audio recordings of court hearings are public records subject to APRA, unless the recording contains confidential material. *See* Indiana Code § 5-14-3-3(a).

This Office recognizes that the general provisions of APRA are to be read harmoniously with the Administrative Court Rules adopted by the Indiana Supreme Court. To that end, consider Rule 9(D)(1): "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...[however] this provision does not operate to deny to any person the right to access a Court Record under Rule 9(D)(1)."

Presumptively the narrative provided by the Complainant is accurate, the Complainant was told that a court recording was not a public record; was referred to the County Clerk who had already told the Complainant that her office did not possess the recordings; and was refused the names of court employees who were denying his records request. Even if access to the court record was lawfully denied, the denial must include the statutory exemption authorizing the denial of the request, as well as the name and title or position of the individual responsible for the denial. Ind. Code §§ 5-14-3-9(d)(2)(A)-(B).

The Complainant has made a reasonably particular request for copies of audio recordings of court hearings. Although the Court was not required to produce the requested recordings immediately, nor to allow the Complainant to listen to the recordings immediately, the audio recordings are undoubtedly public records subject to inspection and copying. In accordance with the APRA and the Administrative Court Rules, the Complainant's request should have been processed as lawful and legitimate.

If the Court has not done so already, I recommend it release the remaining recordings to the Complainant as soon as possible. I also respectfully suggest that the Court staff review the Access to Public Records Act as well as review, revise, or implement its internal procedures for responding to records requests. This will better ensure that future records requests are handled in accordance with the APRA and the Administrative Court Rules. To the extent some of the recordings have been compromised, a public agency has a duty to maintain the integrity of a recording. Unforeseen glitches in technology are an inevitability and are not violative of the law so long as the record was not intentionally altered. This does



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not appear to be the case in the current instance. In any case, it appears as if the Court is willing to satisfy this particular request once IT personnel is able to retrieve the correct recording.

Regards,

Luke H. Britt

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

Public Access Counselor

Cc: Hon. Terry K. Snow