

OPINION OF THE PUBLIC ACCESS COUNSELOR

WILLIAM C. DAVIS,
Complainant,

v.

ELKHART SUPERIOR COURT 3,
Respondent.

Formal Complaint No.
20-FC-132

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to several formal complaints alleging Elkhart Superior Court 3 violated the Access to Public Records Act.¹ The court did not respond despite multiple invitations to do so. 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 September 2, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to a court recording by an inmate of Wabash Valley Correctional Facility.

Lengthy complaints such as the one provided by the complainant are usually dismissed for lack of clarity and succinctness, however, a kernel of an issue was found buried not in the 20 page plus, partially handwritten, single-spaced missive, but in a court order provided as supplemental evidence.

Distinguishable from other similar complaints, this controversy involves a DOC inmate requesting a plea hearing recording of another inmate. The complainant, William C. Davis, submitted to Elkhart Superior Court 3 (Court) a public records request for a recording of the hearing on July 20, 2020. The Court issued an order on July 30, 2020, denying the request. The Court based the denial on the impracticality of providing the recording without disclosing sensitive information. The Court also relied on Indiana Judicial Conduct Rule 2.17, which prevents the broadcast of that information. Davis filed his complaint upon receipt of the denial.

Realistically, it is impossible for this office to know precisely what is contained on the recording and whether the sensitivity projected upon it by the Court renders the recording inaccessible. The nature of the case, however, is known and will be taken into consideration in this opinion.

ANALYSIS

1. The Access to Public Records Act (APRA)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.*

There is no dispute that APRA applies to the Elkhart Superior Court. *See* Ind. Code § 5-14-3-2(q)(1). The Indiana Rules on Access to Court Records also apply and recognize APRA as applicable to the judiciary. *See* Rule 1.

2. Court recordings

Generally speaking, court recordings are presumptively disclosable in accordance with Rules on Access to Court Records adopted by the Indiana Supreme Court. *See* Ind. Access to Ct. R. Rule 4. Except as otherwise provided by this rule, access to court records shall be governed by the Indiana Access to Public Records Act.

On occasion, this office has had disagreements with the manner in which exceptions are applied and has been vocal about doing so. A presumption of disclosure necessarily means any exceptions are applied narrowly. That has not always been the case with access to court recordings.

Unconvincing reasons are often proffered so that courts do not have to provide access to the recordings. This can be especially so for inmates.

Commonplace criminal proceedings are presumptively open to the general public. *See* Ind. Code § 5-14-2-2. It follows that recordings of those open proceedings should carry no expectation of privacy nor would access to those recordings compromise integrity of the proceedings.

Similarly, this office does have difficulty squaring the holding in *WPTA-TV v. State*² with existing promulgated rules and legislated statutory provisions, especially when applied to inmates as they have little-to-no means of broadcasting judicial proceedings during sessions of court. But that is an argument for another day.

Nevertheless, these presumptions are overcome with situational exceptions when applied judiciously and when necessary.

And so it is here.

Undoubtedly, it would have been helpful if the judge in this case supplemented her denial with a response to Davis's formal complaint, but this office is capable of investigating the matter all the same. The Court's denial alludes to the nature of the case being so sensitive that it would render any redaction or separation of disclosable material impractical to the point of the recording losing its efficacy. This case hinges on that point.

² 86 N.E.3d 442 (Ind. Ct. App. 2017).

The recording in question documented a criminal defendant's sentencing hearing for child molestation, dissemination of matter harmful to minors, and possession of child pornography. To be sure, victims, witnesses and identification of minors could likely be gleaned from the recording. This goes to the Court's point: there are reasons why access to the recording is impractical or impermissible.

Even so, there could be reasons to redact and separate the material. But while scrutinizing the hearing could have some foreseeable benefit to journalists, advocates, or attorneys, there is little public policy utility in releasing it to another inmate serving time for similar crimes.

This office may not agree with the entirety of the reasoning for Court's denial, however, we do agree with its ability to exercise discretion in this case to withhold the recording. Release in the matter herein would not be consistent with the scope and purposes set forth in the Rules on Access to Court Records or the Access to Public Records Act.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Elkhart Superior Court 3 did not violate the Access to Public Records Act.

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

Luke H. Britt
Public Access Counselor