

March 28, 2003

Isaac D. Spiehler  
152 Oak Street  
Columbus, IN 47201

Re: *Advisory Opinion 03-FC-11*; Alleged Denial of Access to Public Records by the Decatur Circuit Court.

Dear Mr. Spiehler:

This is written in response to your formal complaint, which was received on March 4, 2003. You have alleged that the Decatur Circuit Court ("Court") has violated the Indiana Access to Public Records Act ("APRA," ) Indiana Code chapter 5-14-3. Specifically, you allege that on February 20, 2003 you requested access to the audiotape of a court proceeding. The Honorable John A. Westhafer, Judge of the Court, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Court did deny you access to public records in violation of the APRA.

## BACKGROUND

According to your complaint, you requested access to the audiotapes of certain hearings. You state that Judge Westhafer refused to set any hearings on your motions to access these public records. You then filed your formal complaint with this Office.

In response to your complaint, Judge Westhafer provided a copy of his March 13, 2003 Order, which addressed your request for access to the audiotapes. This Order provides that the court reporter is to provide you with copies of tape recordings of the guilty plea and sentencing hearings in two separate cases, 03D01-9806-CF-574 and 03D01-9904-CF-354.

## 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." Ind. Code § 5-14-3-1. The Court is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1. Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you requested access to audiotapes that were maintained by the Court and you were informed that the judge would not issue an order granting you this access. It appears that the Court denied you access to these audiotapes, but there was no statutory authority provided for the denial. For this reason, it is my opinion that the Court did deny you access to these audiotapes in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(d). While this does not alter my opinion in this matter, Judge Westhafer has now ordered the court reporter to produce copies of the audiotapes in question to you.

#### CONCLUSION

It is my opinion that the Decatur Circuit Court denied you access to public records in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Hon. John A. Westhafer, Judge w/o enclosure