

March 28, 2003

Isaac Spiehler
152 Oak Street
Columbus, IN 47201

Re: *Advisory Opinion 03-FC-12*; Alleged Denial of Access to Public Records by the Bartholomew Superior Court #1.

Dear Mr. Spiehler:

This is written in response to your formal complaint, which was received on March 4, 2003. You have alleged that the Bartholomew Superior Court #1 ("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 Chris Monroe, 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 on February 20, 2003 Judge Monroe refused provide you access to recordings in two different cases, 03D01-9806-CF-00574 and 03D01-9904-CF-00354. You then filed your formal complaint with this Office.

In response to your complaint, Judge Monroe stated that he no longer has jurisdiction in the cases you referenced above and that you were instructed to contact the special judge, Honorable John Westhafer of the Decatur Circuit Court. Judge Westhafer was to issue an order directing Judge Monroe's staff to prepare copies of the taped hearings for you. The Court will provide you with these copies for the cost of the audiotapes only.

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 denied access to them. 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 Monroe has indicated that you will indeed get copies of the audiotapes in question.

CONCLUSION

It is my opinion that the Bartholomew Superior Court #1 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. Chris Monroe, Judge w/o enclosure