



STATE OF INDIANA

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December 1, 2008

Stuart Showalter
PO Box 374
Lebanon, Indiana 46052

Re: Formal Complaint 08-FC-229; Alleged Violation of the Access to Public Records Act by the Boone Circuit Court

Dear Mr. Showalter:

This is in response to your formal complaint alleging the Boone Circuit Court ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Court's response to your complaint is enclosed for your reference. It is my opinion the Court has not violated the APRA.

BACKGROUND

In your complaint filed October 28, 2008, you allege you submitted a request for copies of records maintained by the Court. Specifically, you requested copies of recordings from three different hearings. You allege the Court violated the APRA by denying you copies of the records and by only allowing you access to appear at the office to listen to the recordings.

The Court responded to your complaint by letter dated November 3 from Judge Pro Tempore J. Jeffrey Edens. Judge Edens contends the Court has not denied you access to the recordings. Instead, the Court has designated times when you may appear at the office to listen to the recordings. Judge Edens cites my *Opinion of the Public Access Counselor 08-FC-13*, which I issued in response to a similar complaint you filed against Boone Superior Court II. Judge Edens further cites recent amendments to Indiana Administrative Rules 9 and 10, which specifically address this issue.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Court is clearly a public agency for the purposes of the APRA. I.C. § 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 the APRA. I.C. § 5-14-3-3(a).

A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2.

A public agency may not disclose any record declared confidential by rules of the Indiana Supreme Court. I.C. § 5-14-3-4(a)(8).

Generally, if a person is entitled to a copy of a public record under the APRA and the agency has reasonable access to a machine capable of reproducing the record, the public agency must provide at least one copy of the record to the person. If the agency does not have reasonable access to such a machine, the person is entitled only to inspect and manually transcribe the record. An agency may require that the payment for copying costs be made in advance. I.C. § 5-14-3-8(e).

The issue here then is whether the Court has met its obligations under the APRA by allowing you access to inspect the records but by denying you copies of the records. I previously addressed a very similar issue in response to a complaint you filed alleging the Boone Superior Court II denied you access to records. In that matter, I indicated my opinion:

Based on this explanation by the Supreme Court of the application of Ind. Administrative Rule 9 to recordings of court proceedings, it is my opinion the Court should either allow you to listen to the recording, or if that is too time consuming for the staff, provide a copy of the recording. The Court may charge you in advance the cost for the copy.
Opinion of the Public Access Counselor 08-FC-13.

My opinion remains unchanged. For the reasons outlined in *Opinion 08-FC-13*, it is my opinion the Court has not violated the APRA. Further, I would note the Indiana Supreme Court has recently addressed this issue by amending Indiana Administrative Rules 9 and 10 to further clarify the rules regarding access to court recordings. Specifically, Ind. Admin. R. 9(D)(4), effective January 1, 2009 provides the following:

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 [former Canon 3(B)(13)]. This provision does not operate to deny to any person the right to access a court record under Rule 9(D)(1).

Further, the Indiana Supreme Court has amended Ind. Admin. R. 10(A) to include the following commentary:

The court is required to preserve the integrity of audio and video recordings of court proceedings. The judge may employ various methods for ensuring the recording is not altered, including but not limited to supervised playback for listening or copying, creating a copy of the recording for use during said playback, serving notice to the parties that the recording is being accessed, and providing a copy, clearly identified as such. As prescribed by Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)], because the court is further required to prohibit broadcasting or televising court proceedings, the court may employ methods to restrict publication of copies of court proceedings made during the pendency of the case.

These amendments, while not effective until January 1, 2009, further clarify the present issue. My opinion today remains the same as that issued in *Opinion 08-FC-13*. Further, I trust the recent amendments to the Indiana Administrative Rules clarify the issue for you as it relates to all future requests you may submit to any Indiana court.

CONCLUSION

For the foregoing reasons, it is my opinion the Court has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Judge J. Jeffrey Edens, Boone Circuit Court