



STATE OF INDIANA

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January 26, 2012

Mr. Alec Kalla
8733 W. Summit Circle Drive
French Lick, Indiana 47432

Re: Informal Inquiry 12-INF-02; Dubois County Circuit Court

Dear Mr. Kalla:

This is in response to your informal inquiry regarding the Dubois County Circuit Court ("Court") filed with the Public Access Counselor's Office on January 12, 2012. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Judge William E. Weikert responded on behalf of the Court. His response is enclosed for your reference.

BACKGROUND

You submitted an inquiry to the Court about obtaining a copy of a transcript for the trial held under Cause No. 19-C01-1108-MI-0298. The court reporter provided that a transcript did not exist, only a digital audio recording. The recording was stored on a computer hard drive, to which a copy of the file existed on CD. Depending on the Court's schedule, attorneys were allowed to listen to the file; all other individuals were ordinarily not granted access. The estimated cost to obtain a transcript of the trial would be \$1125 and would take as long as thirty days to produce. The court reporter advised that it does not make copies of the CDs containing the audio recordings.

You note that one segment of the trial was closed to the public. As a plaintiff, you were allowed under the requirement of confidentiality, to remain and hear the testimony declared confidential. With the possible exception to the segment of the trial declared confidential, you believe that the audio recording of the trial is a public record and should be disclosed in response to an APRA request. You allege that refusal by the Court to provide you with access to or a copy of the audio recording of the trial constituted a violation of the APRA.

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.” *See* I.C. § 5-14-3-1. The Court is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Court’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A court is required to withhold a record that is declared confidential by or under rules adopted by the Supreme Court of Indiana. *See* I.C. § 5-14-3-4(a). The Indiana Supreme Court has adopted Administrative Rule 9, which governs disclosure of court records. AR 9 does not specifically limit access to tape recordings of court proceedings. However, 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 prohibitions on broadcast of court proceedings outlined in Indiana Judicial Conduct Rule 2.17. *Administrative Rule 9(D)(4)*.

The Indiana Supreme Court’s *Public Access to Court Records Handbook* (“Handbook”) provides the following regarding requests for audio recordings of a court proceeding:

Recordings of court proceedings made by court reporters are public records regardless of whether they are produced on magnetic recording tape, compact disk, stenotype, shorthand or digitally recorded upon a computer hard drive unless the specific case type is confidential under Administrative Rule 9. *See* AR 9(C)(2) regarding the definition of “case record” and AR 9 (D)(4) regarding access to audio and video recordings of proceedings. The public has the right to obtain the record within a reasonable period of time after making the request.

A specific means of providing this type of record has not been defined but the time or difficulty of compliance is an important consideration. Allowing the requestor to listen to the recording may be too time consuming to be reasonable for the reporter or a court staff member since the custody and integrity of the original must be continuously maintained.

Providing a copy of the record is probably the most efficient and least time consuming method to provide public access. A reasonable charge for the production of the copy may be made and guidance on this issue may be found in I.C. § 5-14-3-8. Under AR 10, each judge is administratively responsible for the integrity of the judicial records of the court and must ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized

alteration, addition, deletion, or replacement of items or data elements. Under Indiana Code of Judicial Conduct, Rule 2.17(1), a judge may authorize the use of electronic or photographic means for the presentation of evidence, the perpetuation of a record or other purposes of judicial administration. Under no circumstances, should the original be provided to the requestor in order for them to create their own copy.

Requiring the purchase of a transcript would be so costly in many cases as to constitute a denial of access to the public record unless the requestor desires to obtain the record in that format. Given the time required to produce a transcript and the other duties of reporters, the reasonable time for producing the record may well lead the requestor to ask for a different format. If the case is on appeal, a copy of the transcript could be obtained from the Clerk upon its completion and filing.

In situations where the requested record results in provision of an audio and/or audiovisual copy of a court proceeding, the judge should issue an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner. *Public Access to Court Records Handbook, Indiana Supreme Court, July 2010, 49-50.* (<http://www.in.gov/judiciary/admin/files/pubs-accessshandbook.pdf>).

AR 10 and the accompanying commentary provide the following:

Court Responsibilities. Each judge is administratively responsible for the integrity of the judicial records of the court and must ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized alteration, addition, deletion, or replacement of items or data elements.

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.

The Court would be required to respond to your request pursuant to the requirements of the APRA, and AR's 9 and 10. A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the

agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

AR 9(D)(4) provides that Court shall 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 prohibitions on broadcast of court proceedings outlined in Indiana Judicial Conduct Rule 2.17. The Handbook provides that creating a copy of the audio record is probably the most efficient and least time consuming method to provide public access. The court reporter indicated that a copy of the hearing existed on hard drive and CD. If the Court is able to make a copy of the CD, the recording is not declared confidential, and providing the recording complies with the Court's management of its audio recording pursuant to AR 9(D)(4) and Indiana Judicial Conduct Rule 2.17, it may do so. The Court may also issue in conjunction with providing a copy of the CD an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner. The Court would further be allowed to charge you a fee pursuant to I.C. § 5-14-3-8. As to the portion of the hearing that was closed to the public, I am not aware the basis for which the hearing was closed. As such, I am unable to provide an opinion as to whether you would be allowed access to that portion of the record or how your status as a plaintiff would affect your request for this portion of the record.

In closing I would note that the Handbook provides that should the Court have questions regarding issues arising under AR 9 to contact the Office of State Court Administration at (317) 232-2542. If I can be of any further assistance to either party, please do not hesitate to contact our office.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, flowing style.

Joseph B. Hoage
Public Access Counselor

cc: Judge William E. Weikert