

Court and Clerk Records

Access and Maintenance:

Requests for Access to Court Hearing Records

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RIGHT OF PUBLIC ACCESS TO COURT RECORDS

Access to Court Records Rule 5 and Administrative Rule 9

All Court Records, regardless of the manner of creation, method of collection, form of storage, or the form (electronic, paper, microfiche) in which the record is maintained are accessible to the public except as provided in Ind. Access to Court Records Rule 5. If the Access to Court Records Rules do not apply, access to Court Records is controlled by the Indiana Access to Public Records Act, I.C. 5-14-3. See A.C.R. 1(A).

In its Commentary to A.C.R. 1(A), the Supreme Court emphasizes the breadth of its contemplated public access.

The objective of this rule is to provide maximum public accessibility to Court Records, taking into account public policy interests that are not always fully compatible with unrestricted access. The public policy interests listed above are in no particular order. This rule attempts to balance competing interests and recognizes that unrestricted access to certain information in Court Records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. This rule recognizes there are strong societal reasons for allowing Public Access to Court Records, and denial of access could compromise the judiciary's role in society, inhibit accountability, and endanger public safety.

This rule starts from the presumption of open Public Access to Court Records. In some circumstances, however, there may be sound reasons for restricting access to

these records. This rule recognizes that there are times when access to information may lead to, or increase the risk of, harm to individuals. However, given the societal interests in access to Court Records, this rule also reflects the view that any restriction to access must be implemented in a manner tailored to serve the interests in open access. It is also important to remember that, generally, at least some of the parties in a court case are not in court voluntarily, but rather have been brought into court by plaintiffs or by the government. A person who is not a party to the action may also be mentioned in the Court Record. Care should be taken that the privacy rights and interests of such involuntary parties or 'third' persons are not unduly compromised. ...

As defined by A.C.R. 3, Court Records consist of:

- Case Records - any document, information, data, or other item created, collected, received, or maintained by a Court, Court agency, or Clerk of Court in connection with a particular case and
- Court Administrative Records - Court, Court agency, or Clerk of Court pertaining to the administration of the judicial branch of government and not associated with any particular case.

Court Records include audio or video recordings of court proceedings made by a Court Reporter.

ADMINISTRATIVE RULE 10

The commentary to Ind. Administrative Rule 10, Security of Court Records, explains access to audio and video recordings of the court.

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.

MANAGEMENT OF ACCESS

A court may manage access to evidence and 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 Ind. Judicial Conduct Rule 2.17.

A court's access management authority does not extend to denial of access to a public record allowed under A.C.R. 4 or denial of the opportunity for playback of recorded hearings when playback is requested by a litigant, member of the public, or the news media.

TIME FOR RESPONSE TO A REQUEST

Supreme Court Rules do not contain specific provisions governing when a response to a request is due. As a result, the provisions of I.C. 5-14-3 have direct application. Section 9 provides that a denial of disclosure occurs when:

- the person making the request is physically present in the office of the agency,
- makes the request by telephone,
- or requests enhanced access to a document, and
- the person responsible for public records release decisions refuses to permit inspection and copying of a public record or
- 24 hours elapses after any employee of the public agency refuses to permit inspection and copying of a public record,
- whichever occurs first.

If the request is made by mail or by facsimile, a denial of disclosure does not occur until seven days have elapsed from the date of receipt of the request.

If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial is in writing or by facsimile; and the denial **includes** a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial.

The response must acknowledge the request and provide a statement of when and how the record will be provided even if production cannot be immediate, e.g., duties related to an ongoing trial.

DENIAL BY ANOTHER MEANS

When access to a recording of a court proceeding is sought, the response must appropriately address the need for access so that it occurs in a manner that is not tantamount to a denial of access. For example:

- the cost of a lengthy typed transcript as opposed to provision of a copy on a DVD.
- Postponement of the ability to listen to the witness's direct testimony before cross-examination.

AUDIO AND VISUAL RECORDINGS ENTERED INTO EVIDENCE

Requests for access often involve recordings that have been submitted as evidence in a trial or hearing, e.g., recordings of 911 calls, security camera videos, witness interviews or statements, or depositions. These evidentiary materials are available for public access and examination in accordance with the same rules and procedures as documentary items or recordings of court proceedings.

In the view of the Office of Judicial Administration, provision of copies of these audios and/or visual portions of the evidence does not violate Jud. Cond. R. 2.17. The rule only prohibits "...broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions"

However, the circumstances of a request and/or its relation to future trial proceedings may prompt a court to enter an order managing or restricting use of the requested records beyond barring recording or broadcasting from the courtroom or adjacent areas. **Note, this issue has never been litigated by an appellate court in Indiana.**

BEST PRACTICES

- Always maintain control and supervision of the original.
- Provide either a DVD or flash drive that cannot be overwritten.
- Prepare the copy if one is sought.
- A party to a case “may have greater access to Court Records,” such as a recording of a court proceeding. See A.C.R. 2. Note that while the Public Access Counselor has issued several opinions stating that provision of a transcript in lieu of a copy of a recording is permissible, the opinions have turned upon the lack of equipment to produce the sought copy of the recording.
- Redact any confidential material contained on the record if appropriate action was taken under A.C.R. 6 and 7 to exclude the material from public access.
- Consider entry of an order consistent with Judicial Cond. R. 2.17. A model order can be obtained from the IOCS Legal Support Division.
- Do not assess any charges except those authorized by I.C. 5-14-3-8. Do not assess a charge if a court staffer is required to supervise the playback of a court hearing so that a requester may copy it onto the requester’s equipment.