

March 28, 2005

Tony Northington  
D.O.C. # 860238  
Wabash Valley Correctional Facility  
Box 500  
Carlisle, IN 47838

*Re: Formal Complaint 05-FC-43; Alleged Violation of the Access to Public Records Act by the Marion Circuit Court*

Dear Mr. Northington:

This is in response to your formal complaint alleging that the Marion Circuit Court (“Court”) violated the Access to Public Records Act (“APRA”) by failing to give you a transcript. I find that the Court did not violate the Access to Public Records Act.

#### BACKGROUND

You filed your request for a transcript in cause no. 49G20-0009-CF-165561 on January 21, 2005, with the Clerk of the Marion Circuit Court. The Clerk sent your request to Andrea Womack, a court reporter in the cause. She responded by letter to you dated January 27, 2005, stating that the transcript of the record would cost \$64.00 payable to the court reporter. You filed your formal complaint with my office on February 25, 2005. You do not allege any denial of access, writing only “trial transcript cause no.” and the cause number on the required complaint form. You also allege that the “Marion County Court Reporter” was the agency that denied you access, although you name Doris Anne Sadler, the Clerk of the Court as the public official responsible for the denial.

I sent a copy of your complaint to the Clerk of the Marion Circuit Court, since you sent your request for a transcript to that agency. Chari E. Burke, Deputy Clerk of Court Administration responded in writing to your complaint. I enclose a copy of the response for your reference. She stated that the Court does not maintain a copy of the trial transcript in your cause, or any other cause. Rather, the transcript must be created by the court reporter, pursuant to the procedures in Ind. Appellate Rule 9.

## ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular hours of business, except as provided in section 4 of the APRA. A public agency that receives a request for records is required to respond within certain timeframes, or the request is deemed denied. If the agency receives a request via U.S. Mail, it is required to respond within seven (7) days of receipt of the request. Ind. Code 5-14-3-9(b). If a public agency does not maintain a record, it is not a violation of the Access to Public Records Act to not make the requested record available.

The Court has stated that it does not maintain the trial transcript that you seek. Rather, it appears that the Court indicated that the transcript is available, pursuant to Ind. Appellate Rule 9(H), from the court reporter, who is not a public agency under the APRA. It is evident that you received this information, because the court reporter informed you by letter dated January 27, 2005 of the cost of providing the transcript. You do not state any specific basis for your complaint, but I am inferring that you do not believe that you are required to pay the cost of the transcript of the proceeding. Because the trial transcript is not maintained by a public agency prior to its being created, the fee to create the transcript is not governed by the Access to Public Records Act. In fact, Ind. Appellate Rule 9(H) provides that when a transcript is requested, a party must make satisfactory arrangements with the court reporter for payment of the cost of the transcript. Unless a court order requires otherwise, each party shall be responsible to pay for all transcription costs associated with the transcript that party requests.

Your complaint claiming that you were denied a record under the APRA is without merit.

## CONCLUSION

For the foregoing reasons, I find that the Marion Circuit Court did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Chari E. Burke