



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

December 6, 2010

Ms. Cynthia L. Perry  
701 Reserve Blvd.  
Evansville, IN 47715

*Re: Formal Complaint 10-FC-276; Alleged Violation of the Access to Public Records Act by the Warrick County Superior Court - Division 2*

Dear Ms. Perry:

This advisory opinion is in response to your formal complaint alleging the Warrick County Superior Court - Division 2 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* As of today, we have not received a response from the Court.

## BACKGROUND

In your complaint, you allege that the Court denied your request for access to records related to Court hearings. You claim that "Debbie," an officer of the Court, informed you that you could not access the records because you are not an officer of the Court and because "no one in the courts [sic] has time to sit with [you] to listen to the tapes."

My office forwarded a copy of your complaint to the Court. As of today, we have not yet received a response.

## 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." I.C. § 5-14-3-1. The Court is 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 Court's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, it is unclear to me why the Court denied your request. Generally, the public may access audio recordings of judicial proceedings, although the Court could have reason for denying such a request if, for example, Ind. Administrative Rule 9 or an exception to the APRA classified the record as confidential. Without the benefit of a response from the Court, I do not have sufficient information to determine whether or not the substance of its denial violated the APRA. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Court has not provided a justification for withholding the records at issue here, it is my opinion that the Court has failed to carry that burden.

If the Court cannot justify withholding the records under the APRA, I encourage the Court to release the records to you as soon as possible. To the extent the Court persists in denying access following the issuance of an advisory opinion from this office and you believe the Court is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Court has not sustained its burden of proof to demonstrate that it had a legal basis to withhold the records you requested.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor