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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DARIUSZ DROGOSZ,  
*Complainant,*

v.

STARKE CIRCUIT COURT,  
*Respondent.*

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Formal Complaint No.  
19-FC-86

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Starke Circuit Court violated the Access to Public Records Act.<sup>1</sup> The court did not respond to the complaint despite an invitation to do so. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 11, 2019.

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<sup>1</sup> Ind. Code § 5-14-3-1 to 10.

## **BACKGROUND**

This case involves a dispute over access to audio recordings of court proceedings associated with specific case number.

On July 18, 2019, Dariusz Drogosz (“Complainant”) emailed the court reporter for the Starke Circuit Court to follow up on an in-person records request Drogosz made to the court on an earlier date. Essentially, Drogosz is seeking all the audio recordings associated with his son’s criminal case.

On August 5, 2019, the court reporter emailed Drogosz confirming that the judge authorized the release of the requested recordings at no charge. Since the court used software called For the Record (“FTR”) to make the recordings, the court reporter indicated Drogosz would need to verify that he had software compatible to play the audio before the court would proceed with the request. The court also invited Drogosz to schedule a time to listen to the recordings on the court’s equipment.

As a result, Drogosz filed a formal complaint with this office on September 11, 2019 alleging the court improperly denied him access to the records. On September 18, 2019, this office sent notice of the complaint to the court reporter for the Starke Circuit Court and solicited a response. The court did not respond to Drogosz’s complaint.

## **ANALYSIS**

### **1. The Access to Public Records Act (“APRA”)**

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the

affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. 5

The Access to Public Records Act (“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.” *Id.* The Starke Circuit Court is a public agency for the purposes of APRA; and thus, subject to the act’s requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the court’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

While the APRA is silent as to the specific issue of court recordings, the Indiana Supreme Court Handbook on Public Access is instructive. It states:

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 Administrative Rules 9(C)(2) regarding the definition of “Case Record” and 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.

Nothing in the handbook, the Access to Public Records Act, or the Administrative Court Rules expressly requires a re-

quester to have proprietary software in order to obtain copies of recordings. While it is true that 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...[otherwise available].”<sup>2</sup>

With the technological advances of digital recording, it is doubtful that allowing inspection of an audio recording from a proceeding would, in any way shape or form, interfere with the normal operation of the court or cause an undue hardship upon the administration of justice. It is mostly a drag and drop exercise.

Playability by the end user matters not, but it should be a fairly simple exercise since FTR offers a free audio player on the company’s website for the playback of recordings in that format.

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<sup>2</sup> Ind. Admin. R. 9(D)(4).

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Starke Circuit Court should release the audio recordings to the Complainant.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor