

January 19, 2005

Ricky E. Hathaway  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361

*Re: Formal Complaint 04-FC-236; Alleged Violation of the Access to Public Records Act by the Vanderburgh Superior Court*

Dear Mr. Hathaway:

This is in response to your formal complaint alleging that the Vanderburgh Superior Court ("Court") violated the Access to Public Records Act ("APRA") by refusing to provide a transcription of your guilty plea hearing under the APRA. I find that the Vanderburgh Superior Court did not violate the APRA.

#### BACKGROUND

You filed your complaint stating that you were denied access to a case record of the Vanderburgh Superior Court on November 13, 2004. With your complaint, you included an entry on a docket sheet dated November 18. The entry states that "the court denies your request for transcription of guilty plea and sentencing at this time and advises the defendant that the transcript and will be provided to the public defender's office if they appear on your behalf and file a petition for post conviction relief." There is no indication in the materials you provided of when or how you requested that the court supply you with a transcript of your guilty plea hearing.

I sent the Court a copy of your complaint. In response, Judge Robert J. Pigman wrote a letter, which I enclose for your reference. In his letter, he states that there is no transcript of the plea and sentencing because none has been prepared. No transcript would be prepared until there is a request for it pursuant to a Petition for Post Conviction Relief.

## ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless the records are excepted from disclosure under section 4 of the APRA. Records that are declared confidential by or under rules adopted by the supreme court of Indiana are expressly excepted from disclosure under IC 5-14-3-4(a)(8). Also, records that are not created or maintained by the public agency are not required to be disclosed upon a person's request, and an agency is under no obligation to create a record to satisfy a record request, under the APRA.

The Indiana Supreme Court has adopted Criminal Rule 10, which governs records of guilty plea hearings. It states:

If a transcription of the recorded matters has not been prepared, certified and filed in the criminal proceeding, the electronic recording of all oral matters, together with a log denoting the individuals recorded and the meter location of crucial events, shall be maintained as a confidential court record for ten years in all misdemeanors or fifty-five years in all felony cases.

It appears that you requested your transcript and not a copy of the recording, but even if you had requested a copy of the recording, it would be confidential under Ind.R.Crim.P. 10. The court stated that it has not prepared a transcript of your guilty plea hearing, and was under no duty to in the absence of a request to prepare the record pursuant to a post-conviction relief petition. The court did not violate the APRA by denying you a record that it did not maintain and had no obligation to create.

I also note that your request to the court did not bear any indicia that you had requested your transcript under APRA. Although I have written in the past to say that the APRA is an independent means by which a person may obtain records relating to a court or administrative case, to the extent that a request is presented invoking the formal procedures of court or administrative proceedings, a response to that request for records would not have to observe the formalities and requirements of an APRA request. In this case, it appears your request was presented as a motion in court and did not raise APRA; therefore, the court would have had no obligation to respond under the formalities of APRA.

## CONCLUSION

For the foregoing reasons, I find that the Vanderburgh Superior Court did not violate the Access to Public Records Act in denying the transcript of your guilty plea hearing.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Honorable Robert J. Pigman