



STATE OF INDIANA

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February 22, 2012

Tyrone Frazier
One Park Row
Michigan City, Indiana 46204

Re: Formal Complaint 12-FC-45; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court – Criminal Division

Dear Mr. Frazier:

This advisory opinion is in response to your formal complaint alleging the Marion County Superior Court – Criminal Division (“Court”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Judge Stanley Kroh responded on behalf of the Court. His response is enclosed for your reference. I have granted your request priority status pursuant to 62 Indiana Administrative Code 1-1-3(3).

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the Court on January 26, 2012 for a certified tape recording of the guilty plea sentencing hearing held under Cause No. 49-G05-8908-PC-096817. On February 7, 2012, the Court responded in writing to your request and advised that as you had previously been provided with transcript(s) of the hearing and that there has been no demonstrated relevance to any claim pending under the referenced cause number, your request was denied.

In response to your formal complaint, Judge Kroh advised that the requested hearing was conducted on February 12, 1991. Due to its age, the recording of the proceedings is currently located in off-site storage. The Court does not possess the equipment to produce a copy of the tape, but believes a private business, Word Systems, may be able to accomplish this task. The Court indicated that you have already been provided with a copy of the certified transcripts of the hearing that was sought.

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.”



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See I.C. § 5-14-3-1. The Court is a public agency for the purposes of the APRA. See 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. See I.C. § 5-14-3-3(a).

A request for records may be oral or written. See I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here the Court responded to your written request in writing within seven (7) days of its receipt and thus has complied with section 9 of the APRA.

I would note that your complaint is nearly identical to the formal complaint that you filed with the Public Access Counselor in 2007. See *Opinion of the Public Access Counselor 07-FC-185*. There, the Court denied your request for an audio recording of a hearing. *Id.* However, in lieu of the audio recording the Court offered to provide you with a transcript of the tape recordings at no charge. *Id.* Counselor Neal, after consulting various provisions of the APRA and *Public Access to Court Records Handbook* ("Handbook") issued by the Indiana Supreme Court, found that no violation of the APRA had occurred as long as the transcript of the recording had been or would be provided in lieu of the audio recordings. *Id.*

According to the Handbook, Appendix E, recordings of court proceedings made by court reporters are public records, regardless of how the information is stored. *Public Access to Court Records Handbook, Indiana Supreme Court, July 2010, page 49*. The public has the right to obtain the record within a reasonable period of time. *Id.* Requiring the person to purchase a transcript of the hearing may be so costly as to constitute a denial of access to the record. *Id.* at 50. The *Handbook* further indicates that a specific means of providing this type of record (i.e. court recordings) has not been defined, but the time or difficulty of compliance is an important consideration. *Id.* The Court has indicated that it already provided you with a certified copy of the transcript of the proceeding that you have requested. Thus, the Court has complied with the guidelines



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established by the Indiana Supreme Court in responding to your request. The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. See I.C. § 5-14-3-8(e). Accordingly, it is my opinion that the Court has not violated the APRA in denying your request as it has already provided you with a certified copy of the transcript for the hearing that you sought.

CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Judge Stanley Kroh