
OPINION OF THE PUBLIC ACCESS COUNSELOR

AUNG KYAW THU,
Complainant,

v.

ALLEN SUPERIOR COURT,
Respondent.

Formal Complaint No.
17-FC-200

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Allen Superior Court (“Court”) violated the Access to Public Records Act¹ (“APRA”). The Court has responded via Mr. John McGauley, Court Executive. 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 August 21, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Aung Kyaw Thu (“Complainant”) filed a formal complaint alleging that the Court violated the Access to Public Records Act by wrongfully denying him a copy of a court recording.

Complainant is Burmese and has little proficiency with the English language. Through his public defender, he requested an audio recording of his plea and sentencing hearing. The Court recommended Complainant arrange for an interpreter – at his cost - to travel to the courthouse to listen to a copy.

The Court argues inspection in person is sufficient rather than providing a copy. It denies any violation occurred as the Complainant was not denied access, but rather was given the opportunity to listen to the recording in the court.

ANALYSIS

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.” Ind. Code § 5-14-3-1. The Superior Court is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the Court’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a). A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received. Ind. Code § 5-14-3-9(c).

As the Court argues, I agree a court has discretion to prescribe methods as to how an audio recording is accessed. The Access to Public Records Act and the Administrative Court Rules strongly favor access with a presumption of disclosure. Pursuant to Administrative Court Rule 9(D)(4), 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.

The administrative rule and Judicial Conduct Rule 2.17 alludes to restrictions on the method of access *during the pendency of the case*. It stands to reason a judge would want to ensure the integrity of the case by preventing broadcast or alteration of the case while it is being adjudicated.

In the present case, the trial phase of the prosecution is over and is no longer pending. Therefore, the proceedings are in no danger of being compromised or tainted. The threat of alteration is of little consequence as the court retains the original recording as the official record of the trial and subsequent proceedings. Post-adjudication, distributing copies upon request poses little-to-no possibility the veracity of the proceedings would be compromised.

The Court has not offered any indication the records were in jeopardy of being distorted or misrepresented. With a presumption of full disclosure, both the APRA and the Court Rules favor access. Given the expense and inconvenience of the procurement of an interpreter, the distribution of a copy of the recording outweighs any risk of abuse.

I strongly recommend the Court revise its position in this case and release a copy of the audio recording to the Complainant.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor