
OPINION OF THE PUBLIC ACCESS COUNSELOR

MICHAEL A. CHRISTIANSON,
Complainant,

v.

LAPORTE CIRCUIT COURT,
Respondent.

Formal Complaint No.
19-FC-53

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging that the LaPorte Circuit Court violated the Access to Public Records Act.¹ Court Administrator Jason C. Schadt filed an answer to the complaint on behalf of the court. 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 July 1, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute over access to an audio recording of a particular hearing of the LaPorte Circuit Court.

On June 13, 2019, Michael A. Christianson (“Complainant”) emailed a request for public records to the LaPorte Circuit Court. Specifically, Christianson requested the following:

The official audio tapes of the recording of the probation/court hearing held on November 9, 2016, under cause No. 46C01-0207-FA-050.

Christianson asserts that he wants to compare the transcript he received from the court with the actual audio recording from the hearing.

It is worth mentioning that Christianson’s request is identical to a request he made to the court in February 2019. The court denied the first request on March 7, 2019. Essentially, the court asserted that it met the requirements of the Access to Public Records Act because it already provided Christianson with a transcript of the hearing. The court also referenced an unpublished opinion of the Indiana Court of Appeals for further clarification of its reasoning.²

On July 1, 2019, Christianson filed a formal complaint alleging the LaPorte Circuit Court violated APRA by again denying his request for the audio recording of the hearing.

² *Williams v. Allen Cty. Superior & Circuit Courts*, 113 N.E.3d 813 (Ind. Ct. App. 2018), *transfer denied sub nom. Williams v. Allen Cty. Superior & Circuit Court*, 121 N.E.3d 128 (Ind. 2019).

Two days later, the court filed a response with this office. In essence, the court incorporates its previous denial of Christianson’s request as its answer to his current complaint. In sum, the court rejoins that it complied with APRA because it provided Christianson a transcript in lieu of the audio recording he requested.

ANALYSIS

At issue in this case is whether a transcript of a court hearing is the selfsame record as the audio recording used to create the transcript for purposes of the Access to Public Records Act.

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

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.” Ind. Code § 5-14-3-1.

The LaPorte Circuit Court is a public agency for purposes of APRA; and therefore, is subject to the act’s requirements. *See* Ind. Code § 5-14-3-2(q). Thus, unless an exception applies under Administrative Rule 9 or elsewhere, any person has the right to inspect and copy the court’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other

types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Audio Recordings of Court Proceedings

Christianson is seeking access to the audio recording of a hearing but the LaPorte Circuit Court denied the request because it already provided him with a transcript from the hearing.

The court does not contend that the audio recording of the hearing does not exist. Instead, the court asserts that it provided Christianson a transcript of the hearing; and thus, satisfied its duty under the law. In effect, the transcript and the recorded audio used to create the transcript are one in the same.

Inferentially, the court adopts the position set forth by the Indiana Court of Appeals in the unpublished decision: *Williams v. Allen Cty. Superior & Circuit Courts*, 113 N.E.3d 813 (Ind. Ct. App. 2018).

In *Williams*, the court affirmed the judgment of the trial court in concluding that an offender who received a paper copy of a trial transcript was not entitled to a copy of the trial recording under the Access to Public Records Act.

Notably, unpublished decisions issued by the Indiana Court of Appeals are not binding precedent in accordance with Indiana Appellate Rule 65(D). Even so, because this office is not a court of law we will carefully consider the court's holding in *Williams* rather than avoid it because it is not binding. This office interprets the holding in *Williams* to mean that the trial court met its requirements under APRA because

the offender received a paper copy of the transcript; and, thus was not entitled to receive the record in a different format (e.g., audio recording) under APRA or Administrative Rule 9.

What is more, the court explained that even if the requestor was entitled to the recording under the law, the court no longer had it because the offender waited 25 years to request it.

At its core, the *Williams* court implied that a paper transcript and an audio recording of hearing are the same record only in different formats. As a result, a requestor who receives the transcript is not entitled to access the original recording.

This office respectfully disagrees.

An original audio recording of a court hearing is mutually exclusive from a transcript and has vastly different characteristics. Tone, inflection and pacing can all be extrapolated from an audio recording wherein a transcript only dictates the words spoken.

Moreover, a public agency that maintains its public records in electronic form must make reasonable efforts to provide the record in that form. *See* Ind. Code § 5-14-3-3(d). Furthermore, the legislature added a provision in that same section in 2018 mandating: A public agency shall provide an electronic copy or a paper copy of a public record, at the option of the person making the request for the public record. *See* Ind. Code § 5-14-3-3(j).

Therefore, if both a transcript and an audio recording co-exist, the requester is able to choose in which format he or she receives the record. If only a transcript exists and the

audio recording has been lawfully destroyed, so be it – only the transcript need be provided.

The Indiana Supreme Court’s *Public Access to Court Records Handbook*³ also provides guidance on this issue:

Recordings of court proceedings made by court reporters are public records regardless of whether they are produced on [electronic devices].

...

Management of access does not justify a denial of access to the public record. The public has the right to obtain the record within a reasonable period of time after making the request.

Providing a copy of the [audio recordings of court proceedings] is probably the most efficient and least time consuming to provide public access

(emphasis added.) There is no explicit exception on point in this case and the court has not indicated an imminent threat of broadcast by the requestor that would jeopardize the integrity of the administration of justice.

³ Public Access to Court Records Handbook, 2018 Ed., Indiana Supreme Court, Indiana Office of Court Services, pp. 47-48.

CONCLUSION

If an audio recording of the hearing in question exists, it is the recommendation of this office that the LaPorte Circuit Court provide the Complainant access to the audio record consistent with the Access to Public Records Act and Administrative Rule 9.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor