

February 18, 2008

Judge Rebecca McClure  
Boone Superior Court II  
112 Courthouse Square  
Lebanon, Indiana 46052

*Re: Your informal inquiry*

Dear Ms. McClure:

This is in response to your informal inquiry dated February 11, 2008. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You telephoned my office to inquire about an issue related to public access, and I returned your telephone call. I misunderstood your initial inquiry, and I address the misunderstanding as well as your present inquiry here. I thought you inquired whether you must allow a member of the public to record a trial or court hearing using his own equipment.

It is the intent of the Open Door Law (“ODL”)(Ind. Code 5-14-1.5) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. § 5-14-1.5-3(a).

The judiciary is not included in the definition of a public agency found in the ODL. I.C. § 5-14-1.5-2(a). As such, the requirement that a governing body allow members of the public to record its meetings is not applicable to the judiciary. It is my opinion the ODL does not require you to allow a member of the public to record proceedings in your court.

I now understand your inquiry to be an inquiry regarding the application of the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3). Under the APRA, the Court is a public agency (See I.C. § 5-14-3-2(1)) and as such is required to provide access to inspection and copying of its records. I.C. § 5-14-3-3. Your inquiry is whether the Court is required to allow a member of the public to use his own recording equipment to record the official audio recording of a court trial or hearing.

This issue was addressed in *Opinion of the Public Access Counselor 05-FC-70*. Because the issue is nearly identical, I have provided an extensive excerpt. As Counselor Davis indicated,

The central provision in APRA states that any person may “inspect and copy” the public records of any public agency. IC 5-14-3-3(a). The words that I set in quotes are action verbs that suggest that the person availing himself of APRA may do something, inspect and copy, public records. The APRA does not say that a person may receive a copy of a record, unlike Louisiana’s public records law, which states: “any person...may inspect, copy or reproduce *or obtain a reproduction* of any public record.” La. R.S. 44:1-44. (Emphasis supplied); See *First Commerce Title Company, Inc. v. Martin*, 887 So.2d 716 (La. App. 2004)(upholding a person’s use of a portable scanner in Clerk’s office to reproduce records).

Further, IC 5-14-3-3(b) prohibits a public agency from denying or interfering with the exercise of the right stated in subsection (a). The difficulty in interpretation stems from the language stating that a public agency shall either provide the copies or allow the person to make copies on the agency’s equipment or on the requester’s own equipment. The APRA is silent on whether the options for supplying a copy are solely within the public agency’s discretion. In fact, the public agency *could* wish to exercise its discretion to decline to make the copies and instead allow the person to make the copies himself on either the agency’s equipment or the person’s own equipment. This is a reasonable interpretation of IC 5-14-3-3(b)(2). Also, a public agency is not required to maintain equipment capable of reproducing a record; in that instance, the public agency must permit a person to inspect and manually transcribe the record. IC 5-14-3-8(e).

However, to read this clause to not allow a person to use his own equipment to make a copy would nullify the language in IC 5-14-3-3(b)(2)(B). . .  
*Opinion of the Public Access Counselor 05-FC-70*.

I agree with Counselor Davis’s opinion, that a public agency must allow a person to make copies using his own equipment. A public agency is required, however, to protect records from loss, alteration and destruction. I.C. § 5-14-3-7(a). So it is also my opinion a public agency may prohibit a person from using his own equipment to make copies when the use of that equipment might cause loss, alteration, or destruction of the record. It is my understanding you do not claim such a threat exists in this instance. As such, it is my opinion you should allow the requester to record the court recordings, unless any other exceptions to disclosure are present.

Best regards,



Heather Willis Neal  
Public Access Counselor