



STATE OF INDIANA

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June 24, 2015

Dr. Beverly R. Newman
4102 66th St. Circle West
Bradenton, FL 34209

Re: Formal Complaint 15-FC-187(Priority); Alleged Violation of the Access to Public Records Act by the Marion County Circuit Court

Dear Dr. Newman,

This advisory opinion is in response to your formal complaint alleging the Marion County Circuit Court ("Court") has violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Court has issued a response via the Hon. Judge Louis Rosenberg. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 14, 2015.

BACKGROUND

Your complaint dated June 14, 2015 alleges the Marion County Circuit Court violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On May 12, 2015, you requested a transcript of your six (6) hour hearing which took place on May 11, 2015. You received the transcript on May 29, 2015. On May 27, 2015, your associate hand-delivered a request for an audio recording of court proceedings which took place on May 11, 2015. You then received a response Judge Rosenberg would have to create a court order.

On June 4, 2015, your associate hand-delivered another request for an audio recording of a court proceeding which involved you. You did not receive a response in 24 hours. On June 11, 2015, your request was partially denied and you were told that if you wish to listen to the recording, you could to do so in person or have a representative listen.

On June 19, 2015, Judge Rosenberg responded to your complaint. Judge Rosenberg notes the Court will provide a recording to you, as requested, with conditions you not broadcast, televise or copy the recording, among other conditions.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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.” See Ind. Code § 5-14-3-1. The Marion County Circuit Court is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Court’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

An audio recording of a court proceeding is a public record subject to disclosure pursuant to several controlling authorities including Indiana Administrative Trial Rule 9, Ind. Code § 5-14-3 et. al. and the Supreme Court Handbook on Public Records (see Appendix E). This is balanced with the judiciary’s need to “avoid substantial interference with the resources or normal operation of the court”.

The facts presented do not appear to interfere with the Court’s normal operations. The request is fairly customary in nature. To that end, the Court has agreed to provide you with a copy of the audio recording. A Court Order issued by Judge Rosenberg, however, prohibits you from altering the recording or otherwise copying or broadcasting the information on the recording. This is in discharge of Rule 2.17 of the Code of Judicial Conduct. Because the cause is still ongoing, section 3(c) of the Rule applies to the instant matter.

Generally, Access to Public Records Requests should be considered to be mutually exclusive of litigation. The request is made upon the Court and not upon parties to the case. I respectfully request that the Court avoid confusion in the future by intertwining the two. That being said, in this case, because you indicated you may use the recording for ‘newsgathering’ purposes in your capacity of a journalist, the Court Order appropriately included a prohibition on using the recording (record) for such activity.

From the information provided, it appears the Court has acted in compliance with the Access to Public Records Act by providing you with the record.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Hon. Judge Louis Rosenberg