



STATE OF INDIANA

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October 14, 2015

Mr. Jesse Clements, Mr. Gersh Zavodnik
Post Office Box 68082
Indianapolis, Indiana 46268

Re: Formal Complaint 15-FC-250; Alleged Violation of the Access to Public Records Act by the Marion Superior Court 6

Dear Mr. Clements and Mr. Zavodnik,

This advisory opinion is in response to your formal complaint alleging Marion Superior Court 6 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Court has responded to your complaint via Ms. Emily VanOsdol, Court Administrator. Her 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 September 11, 2015.

BACKGROUND

Your complaint dated September 9, 2015 alleges Marion Superior Court 6 violated the APRA by denying you access to public records.

On August 10, 2015, Mr. Zavodnik orally requested the opportunity to listen to and duplicate an audio recording. You allege access was denied without statutory authority. This was repeated in a phone call by Mr. Clements.

On August 10, 2015, an APRA request was submitted to the Court and served to a court reporter. Mr. Clements was informed that a copy of the record could be purchased for \$25, but due to staffing limitations, you would not be allowed to listen to the recording. You contend this fee is improper.

On September 14, 2015, the Court responded to your formal complaint. Administrator VanOsdol states the Court must balance the requirements of Administrative Rule 9(D)(4), which states the Court "may manage access to audio and video recordings [...] to the extent appropriate to avoid substantial inference with the resources and normal operations of the court."



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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.” See Ind. Code § 5-14-3-1. Marion Superior Court 6 is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, 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. See Ind. Code § 5-14- 3-3(a).

You first take exception to the August 10, 2015 exchange between the Court and Zavodnik to the extent the Court staff made no attempted to justify its ‘denial’ with statutory authority. Pursuant Ind. Code § 5-14-3-9(d), a denial of an oral request to inspect a record does not have to state statutory justification for the denial -only written requests are entitled to a written denial with statutory justification.

This was followed by a written request by Mr. Clements the same day; however, you were told the Court would only allow you to purchase a copy of the recordings and not to inspect in person.

This leads to your complaint that the court’s refusal to allow you to listen to the recording before purchase constituted a denial under the APRA. You were informed the court was short-staffed. Ind. Code § 5-14-3-3(b) states that inspection must be allowed “[w]ithin a reasonable time after the request is received by the agency.” It is not reasonable to require a public agency, such as Marion Superior Court, to immediately permit you to listen to a recording. For example, an appointment may be necessary in order that the Court may make appropriate arrangements to give you the opportunity to inspect/listen to a recording.

This is supported by Indiana Administrative Rule 9(D)(4) which states 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.”

If the Court has made the determination that your presence in the courtroom would cause substantial interference with the operation of the court, then they may be justified in merely allowing you to purchase a copy of the recording. If the Court has made this



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determination arbitrarily and without merit; however, then you are correct it would be an impediment to access and your rights may have been compromised.

You interpret the refusal to allow you access to inspect as an APRA denial, however, I interpret it as a denial under the Indiana Administrative Rule 9(4)(D) which would not necessitate a written denial under Ind. Code § 5-14-3-9(d). This would only be the case if they also denied you a copy of the recording. It appears as if the copy is available for your purchase.

Your next complaint is that the court is charging an excessive copy fee for the records requested. The only guidance from the APRA is found in Ind. Code § 5-14-3-2(d), which sets direct cost at one hundred five percent (105%) of the sum of the cost required to create the copy. You note the local rule only establishes a maximum fee of \$25.

You raised a similar issue in a previous complaint, *Advisory Opinion 13-FC-293*. In that opinion, I noted the court fees are meant to take into consideration the actual cost of materials. I also noted the fees collected must be reasonable and uniform for all requestors. However, in that opinion I did not specifically address the propriety of the actual cost.

In relevant part, Ind. Code § 5-14-3-8(g) states:

for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following: (1) The agency's direct cost of supplying the information in that form. (2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

Accordingly, Marion County Local Rule LR49-AR15-307(B)(11) states that:

The maximum fee a Court Reporter may charge for preparing a Compact Disc recording of a proceeding is Twenty-five Dollars (\$25.00).

The Court did not address the actual cost issue in its response to your complaint. Twenty-five Dollars does indeed seem to be excessive for a compact disc. My recommendation is that the promulgators of the Marion County Local Rules reevaluate this charge in light of



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Ind. Code § 5-14-3-8(g). The Court cannot necessarily be faulted for following the Local Rule; however, the Rule itself may be contrary to the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Emily VanOsdol, Court Administrator