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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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LARRY W. WARREN,  
*Complainant,*

v.

MARION SUPERIOR COURT—OFFICE OF THE  
COURT ADMINISTRATOR,  
*Respondent.*

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Formal Complaint No.  
17-FC-247

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Marion Superior Court’s Criminal Division (“Court”)—by and through the Office of the Court Administrator—violated the Access to Public Records Act<sup>1</sup> (“APRA”). Staff attorney Pauline A. Beeson filed an answer to the complaint with this Office on behalf of the Court. In accordance with Indiana Code section 5-14-5-10, I issue the

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

following opinion to the formal complaint received by the Office of the Public Access Counselor on November 1, 2017.

### **BACKGROUND**

Larry W. Warren (“Complainant”) filed a formal complaint alleging the Court violated the APRA by wrongfully denying him access to public records.

On August 7, 2017, Warren submitted a records request to the Court Administrator seeking a set of records associated with a particular criminal case—decided in 2012—where he was the defendant.

Specifically, Warren requested one complete and full copy of a transcript from a proceeding on September 4, 2012, and all records concerning “in chamber contacts for the Honorable Carol Orbison...with the Marion County prosecuting attorney or deputy thereof, for July 6, 2012 at any time that day.”

Although the request itself identifies the Court Administrator as the recipient, the address is incorrect. As a result, it appears Warren’s request was originally received and file-stamped by the Marion County Clerk’s Office on August 10, 2017.

It appears Magistrate David Hooper reviewed the request on August 14, 2017, and noted that Warren addressed it to the Court Administrator. Magistrate Hooper instructed the court staff to forward the request, and noted that Warren had no petition for post-conviction relief pending, so he had no right to a free transcript and the Court was unaware of the existence of anything included in part B of the request.

On August 15, 2017, the Court Administrator received and responded to Warren's request with an acknowledgement letter, stating it had initiated a search for records responsive to his request.

Warren contends that he sent a follow-up letter on September 29, 2017, asking for an update on the status of his records request. Warren asserts that he received a letter on October 10, 2017, indicating that no request had been received. Notably, the Marion County Clerk's Office sent that correspondence to Warren, not the Court Administrator. That explains why the Court Administrator stated that this correspondence was never received by her office. It appears Warren asked the Marion County Clerk for an update on the request he made to the Court Administrator. This apparently resulted in confusion and possibly this complaint.

Regardless, on October 25, 2017, the Court Administrator mailed Warren a letter and 13 pages of records the office identified as responsive to his request. The Court Administrator stated that it was unable to locate a transcript for the hearing on September 4, 2012 for cause number 49G25-1001-FA-001153.

The Court Administrator disputes that an APRA violation occurred in this case based on its correspondence with Warren and the release of the responsive records in its possession. The Court Administrator notes that there is no transcript of the September 4, 2012 hearing in its records to release to Warren as requested.

Lastly, the Court Administrator contends that the correspondence—dated September 29, 2017—that Warren included with his formal complaint was never received by the

Court Administrator. Moreover, the Court Administrator asserts that anything that Warren believes he received in response to that specific letter is not from her office.

### ANALYSIS

Warren contends that the Marion Superior Court’s Criminal Division—by and through the Office of the Court Administrator—violated the Access to Public Record Act (“APRA”) by wrongly denying him access to public records.

As a preliminary matter, based on the evidence submitted to this Office, it is reasonable to conclude that the Complainant was unclear about *where* to direct his request for records and subsequent follow-up correspondence. Undoubtedly, this led to confusion.

#### 1. 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. Marion Superior Court is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n).

Therefore, unless an exception applies, 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 requires that all requests for inspection and copying identify with reasonable particularity the record being requested; and be, at the discretion of the agency, in writing on or in a form provided by the agency.

Further, 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). An agency may deny a written request if the denial is made in writing or by fax, and the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title of the person responsible for the denial. *See* Ind. Code § 5-14-3-9(d).

Because the Court Administrator eventually released everything in its possession, the only issue left to address is the transcript of the 2012 hearing.

The aforementioned confusion, however, is exacerbated by the fact that a transcript is not a public record until it is actually prepared. Indiana Courts utilize court reporters to prepare transcripts upon request. To my knowledge, requests for transcripts - post adjudication - do not typically go through a judge or a court, but are handled independently by the court reporter. As long as you pay the requisite fee to the Court Reporter, it is a privately prepared transcript. Once a criminal case has concluded, defendants cannot claim indigence to have a transcript prepared on his behalf if one is not made during the trial or appellate process. A transcript is not a public record until it is prepared and the preparation of the document is not an entitlement. A request for a copy of the recording of the proceedings may be more successful.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that the Office of the Court Administrator for Marion Superior Court has not violated the Access to Public Records Act.

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

Luke H. Britt  
Public Access Counselor