



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 30, 2008

Irene Yeary
219 Solarama Court
Cincinnati, Ohio 45238

Re: *Formal Complaint 08-FC-206; Alleged Violation of the Access to Public Records Act by the Switzerland County Superior Court*

Dear Ms. Yeary:

This advisory opinion is in response to your formal complaint alleging the Switzerland County Superior Court ("Court") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Court's response to the complaint is enclosed. It is my opinion that the APRA and Administrative Rule 9 require the Court to provide you a copy of the requested records unless the specific case type renders the records confidential. Further, the Court may charge a fee for copies of the records, pursuant to I.C. § 5-14-3-8.

BACKGROUND

You filed the present complaint on September 9, 2008, alleging the Court denied you access to records. You allege that you submitted a request for access to copies of the audio recordings of a December 2006 trial. You allege you made this request through two different attorneys, both of whom were denied access to the recordings. On September 20 you submitted to this office a copy of an August 22, 2008 letter from the court reporter. The reporter indicates she does not believe you will be able to play the discs containing the audio recordings because they are recorded using a unique recording system. The reporter further indicates her frustration that you obtained a copy of a transcript through someone other than her.

The Switzerland County Circuit and Superior Court Clerk ("Clerk") responded to the complaint by electronic mail message dated September 25. The Clerk indicated that her office does not maintain a copy of the audio recordings but that the court reporter is the custodian of those records.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1.

The Court is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A court is required to withhold a record that is declared confidential by or under rules adopted by the Supreme Court of Indiana. I.C. § 5-14-3-4(a). The Indiana Supreme Court has adopted Administrative Rule 9, which governs disclosure of court records. Administrative Rule 9 does not specifically limit access to tape recordings of court proceedings. According to the court's *Public Access to Court Records Handbook*, recordings of court proceedings made by court reporters are public records regardless of how the information is stored, unless the specific case type is confidential under Administrative Rule 9. *Public Access to Court Records Handbook, Indiana Supreme Court, December 2004, at 48*. The public has the right to obtain the record within a reasonable period of time. According to the *Handbook*, a person may obtain a copy of the recording. Requiring the person to purchase a transcript of the hearing may be so costly as to constitute a denial of access to the record. *Id.*

In my opinion, the public policy of the APRA as well as the guidance of the Indiana Supreme Court would require disclosure of a copy of the audio recording upon request. As indicated in the *Handbook*, "a reasonable charge for the production of the copy may be made and guidance on this issue may be found in" I.C. § 5-14-3-8. Nothing in the APRA or Administrative Rule 9, though, would require the Court to provide copies of the recordings other than as they currently exist. In other words, if the recordings were made utilizing unique equipment and the Court does not have reasonable access to a machine capable of reproducing the discs in a format anyone could play, the APRA does not require the Court to purchase such equipment or otherwise alter the records. See I.C. § 5-14-3-8(e), regarding copies of records.

CONCLUSION

For the foregoing reasons, it is my opinion that the APRA and Administrative Rule 9 require the Court to provide you a copy of the requested records unless the specific case type renders the records confidential. Further, the Court may charge a fee for copies of the records, pursuant to I.C. § 5-14-3-8.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Ginger Peters, Switzerland County Circuit and Superior Court Clerk