

January 12, 2006

Donald Jacobs
Michelle Jacobs
2913 E. Center Road
Kokomo, IN 46992

Re: Formal Complaint 05-FC-254; Alleged Violation of the Access to Public Records Act by the Clerk of the Wabash Circuit and Superior Courts

Dear Mr. and Mrs. Jacobs:

This is in response to your formal complaint alleging that the Clerk of the Circuit and Superior Court (“Clerk”) violated the Access to Public Records Act by failing to respond to your request for a copy of a digital recording of a post-dissolution hearing, and failing to provide the record. I find that the Clerk should have responded to your written request within seven days, but otherwise did not deny you a record.

BACKGROUND

You filed your formal complaint on December 15, 2005, alleging that in early December, you visited the Clerk’s office and were denied your right to inspect or obtain a copy of the digital audio CD-Rom of a post-dissolution hearing conducted by the Wabash Superior Court on November 23, 2005. You followed up on your oral request with a written request dated December 6. As of the date of your complaint, you had not received any response from the Clerk.

I sent a copy of your formal complaint to Lori Draper, the Clerk of the Wabash Circuit and Superior Courts. Ms. Draper responded by letter dated December 16, 2005. She stated that when you visited her office and requested the audio recording, she had referred you to the Superior Court office, because all audio recordings are kept in the court offices and are not part of the Clerk’s records. Ms. Draper did not realize that she should have provided you with a response to your written request for the record. She enclosed with her complaint response the text of a letter that she sent to you in which she explained that the Clerk does not maintain the

digital copies of hearings, and the Clerk is not required to maintain them under Trial Rule 77(A) or Administrative Rule 7.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). The Clerk of the Wabash Circuit and Superior Court is a public agency under the APRA. IC 5-14-3-2(l). It is the responsibility of the public agency to respond to requests for access to public records within a specified period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial of disclosure occurs when the person making the request is physically present in the office of the agency, and the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made. IC 5-14-3-9(a)(1). If a request is received by U.S. Mail, the agency is required to respond within seven (7) days. IC 5-14-3-9(b).

Although you allege that the Clerk "flatly denied" your request for a record, the Clerk avers that she explained to you that the Clerk does not maintain the record of a digital recording, and referred you to the Court office that does maintain the record and is responsible for the decision whether to release the tape. In my opinion, this information was not a denial of a record, since the Clerk does not maintain the record, and told you so when you visited the office. However, the Clerk should have sent you a written response within seven days after she received your mailed follow-up request.

You appear to challenge the Clerk's assertion that she does not maintain the digital recording of the post-dissolution hearing. You cite to Administrative Rule 7 and Trial Rule 77(A) as evidence that the Clerk is required to maintain the recording. Administrative Rule 7 describes record retention requirements for court records. Trial Rule 77(A) sets out the types of records that are required to be maintained by the Clerk of the Circuit Court. However, upon my review of the court rules you cite, I do not draw the conclusion that the digital recording of the proceeding is to be maintained in the Clerk's files; only the transcription of the proceeding, if any, is required to be maintained by the Clerk.

From my investigation of your complaint, it appears that you have requested the record from the Court, and the Court is attempting to work with you to provide you with a copy of the record.¹

CONCLUSION

¹ According to the *Public Access to Court Records Handbook*, Appendix D, recordings of court proceedings made by court reporters are public records regardless of how the information is stored. The public has the right to obtain the record within a reasonable period of time. A person may obtain a copy of the recording, according to the *Handbook*. This is consistent with the Access to Public Records Act. The *Public Access to Court Records Handbook* can be accessed at <http://www.in.gov/judiciary/pubs/>.

For the foregoing reasons, the Clerk of the Wabash Circuit and Superior Court violated the Access to Public Records Act when she failed to respond in writing to your mailed request for the record, but otherwise did not deny you a record of the digital recording of the hearing, because the Clerk does not maintain the record.

Sincerely,

Karen Davis
Public Access Counselor

cc: Lori J. Draper
Honorable Christopher Goff