

August 23, 2004

Ms. Beth Penick
P.O. Box 327
Waterloo, IN 46793

Re: Advisory Opinion 04-FC-122; Alleged Violation of the Access to Public Records Act by the Allen County Superior Court

Dear Ms. Penick:

This is in response to your formal complaint alleging that the Allen County Superior Court, Criminal Division ("Court") violated the Access to Public Records Act ("APRA"), I.C. §5-14-3, by denying your records request. Specifically, you allege that the Court denied you access to copies of audio tapes of court proceedings. The Court has responded to your complaint, a copy of which is enclosed for your reference. For the reasons set forth below, I find that the Court did not violate the Access to Public Records Act as alleged in your complaint.

BACKGROUND

On July 9, 2004, you submitted a written request to the Allen County Superior Court, Criminal Division. Specifically, you requested a copy of the audio record/tapes of the following court proceedings:

- 1) Edward Perrey pretrial hearing, cause number 02D04-0302-FC-30;
- 2) Edward Perrey trial hearing, cause number 02D04-0302-FC-30; and
- 3) Edward Perrey sentencing hearing, cause number 02D04-0302-FC-30

On July 12, 2004, the Honorable Frances Gull, Administrative Judge of the Allen County Superior Court, Criminal Division, responded on behalf of the Court. She stated that pursuant to I.C. §5-14-3-4(a)(8) and Indiana Rules of Court, Criminal Procedure Rule 5, the records you requested are confidential and cannot be disclosed to you. After receiving that response, you submitted a formal complaint to this Office.

I forwarded a copy of your complaint to the Court. In response to your complaint, the Court states that the audio tapes requested are in the process of being transcribed following Perrey's appeal request, and maintains that under Ind. Ct. C.P.R. 5, the audio tapes that you request are confidential. She also states that once the transcript is

complete, you will be able to obtain a copy of that transcript from the court reporter.

ANALYSIS

Public records of a public agency are to be available for inspection and copying during the regular business hours of the agency, except as provided in I.C. §5-14-3-4. I.C. §5-14-3-3(a). A public record means "any writing, paper, report . . . tape recording, or other material . . . that is created, received, retained, maintained, or filed by or with a public agency." I.C. §5-14-3-2. The Court is a public agency for purposes of the Access to Public Records Act. As such, unless specifically excepted, its public records are subject to disclosure.

The Court's response to your request specifically denies you access to those records pursuant to I.C. §5-14-3-4(a)(8) and Ind. Ct. C.P.R. 5. Indiana Code Section 5-14-3-4(a) states that the following records shall be excepted from disclosure to the public: "(8) (t)hose declared confidential by or under rules adopted by the supreme court of Indiana." Indiana Rules of Court, Criminal Procedures, Court Rule 5, a copy of which was provided by the Court, requires electronic recording or stenographic reporting, with computer-aided transcription, of all oral evidence and testimony given in all cases and hearings. Court Rule 5 further states, in pertinent part, that "if a transcription of the recorded matters has not been prepared, certified and filed in the criminal proceeding, the electronic recording of all oral matters *shall be maintained as a confidential court record* for ten years in all misdemeanors or fifty-five year in all felony cases." (Emphasis added).

The Court's correspondence indicates that the criminal matter for which you requested the audio tapes is currently under appeal, and as such, the transcription is in the process of being prepared. Insofar as the transcription has not yet been completed, Ind. Ct. C.P.R. 5 applies, and those audio tapes cannot be disclosed to you. Therefore, I decline to find that the Court violated the Access to Public Records Act by denying you access to those audio tapes.

It should be noted that the Court advises that once the transcription is completed, a copy of the transcript can then be disclosed to you through the court reporter.

CONCLUSION

For the reasons set forth above, I find that the Allen County Superior Court, Criminal Division, did not violate the Access to Public Records Act as alleged in your complaint.

Sincerely,

Karen Davis
Public Access Counselor

cc: the Honorable Frances Gull; w/out enclosures