

March 23, 2004

Ms. Sara M. Eaton  
The Journal Gazette  
600 West Main Street  
P.O. Box 88  
Fort Wayne, Indiana 46801

*Re: 04-FC-27; Alleged violation of the Access to Public Records Act by the Clerk of the Allen Circuit and Superior Courts*

Dear Ms. Eaton:

This is in response to your formal complaint alleging that the Clerk of the Allen Circuit and Superior Courts (Clerk) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied your request for access to a list of juror names for the jurors who served in the matter captioned *State v. Edward Corcoran*, No. 02D04-9707-CF-000465. The Clerk and the administrative judge for the court have separately responded to your complaint, and copies of those responses are attached for your reference. For the reasons set forth below, it is my opinion that the Clerk did not violate the APRA when it denied you access to the records.

#### BACKGROUND

On February 12, 2004, you submitted a written request for records to the Clerk of the Allen Circuit and Superior Courts. That request sought access to a list of juror names for the jurors who served in the matter captioned *State v. Edward Corcoran*, No. 02D04-9707-CF-000465. The face of the written request indicates that it was hand-delivered to the Clerk. The Clerk responded in writing by letter dated February 16, 2003, and postmarked February 17, 2004, both dates more than 24 hours after receiving the request.<sup>1</sup> The Clerk's response stated that she communicated the request to the Superior Court responsible for handling the jury process, and that she would retrieve the requested documents as soon as they became available to her.<sup>2</sup>

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<sup>1</sup> Indiana Code 5-14-3-9(a) requires a public agency to respond in writing within 24 hours of receiving a hand-delivered written request for records.

<sup>2</sup> An identical response was transmitted from the Clerk to you on February 17, 2004.

On February 18, 2004, the Clerk further responded to your request and denied you access to the requested records. Specifically, in a written response delivered by electronic mail, the Clerk asserted that the requested records were confidential and subject to nondisclosure pursuant to Indiana Code 5-14-3-4(a)(8) (requiring nondisclosure of records declared confidential by or under rules of the supreme court of Indiana), Indiana Jury Rule 10 (governing jury safety and privacy), and Indiana Administrative Rule 9 (governing confidentiality of court records). According to the Clerk, Jury Rule 10 and Administrative Rule 9 provide that personal information relating to a juror or prospective juror and that is not disclosed in open court is confidential. *See* Ind. Jury Rule 10; Ind. Administrative Rule 9(L). In a written response submitted to the Clerk that same day, you stated that you were entitled to the information pursuant to Indiana Code 33-4-11, and indicated that you were filing the instant complaint.

This complaint followed.

### ANALYSIS<sup>3</sup>

The public policy of the APRA is set forth in the preamble to that statute, and states:

[I]t is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing 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.

IC 5-14-3-1. In enacting the APRA and the broad policy supporting access to public records, the Indiana General Assembly at the same time acknowledged and determined that public policy required that certain records were appropriate to be maintained as confidential. Indeed, Indiana Code 5-14-3-4 sets forth thirty-one (31) instances in which the public agency must or may withhold disclosure of public records (IC 5-14-3-4), and Indiana Code 5-14-3-3(a) subjects access to public records to the exemptions as set forth in that section (IC 5-14-3-3(a)). Even the preamble acknowledges that some public records are not subject to disclosure. *See* 5-14-3-1 (“This chapter shall be liberally construed to implement this policy and place the *burden of proof for the nondisclosure of a public record* on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.”) (Emphasis added).

Indiana Code 5-14-3-4(a) sets forth the exemptions to disclosure that is mandatory. That is to say, if the information sought by a request for records falls within one of the exemptions set forth therein, the public agency does not have discretion; it “may not” disclose the records “unless access to the records is specifically required by a state or federal statute or is ordered by

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<sup>3</sup> Indiana Code 5-14-5-9 requires this office to issue an advisory opinion on a formal complaint not later than 30 days following receipt. The formal complaint in this matter was received in this office on February 19, 2004, after being sent by facsimile the previous evening. This opinion was due to be issued on March 22, 2004, and is being issued one day late. To the extent that this opinion may later be successfully challenged on that basis, it is my intent that it serve as an informal inquiry response, which response may be filed at any time.

a court under the rules of discovery.” IC 5-14-3-4(a). One of the mandatory exemptions to disclosure is for those records “declared confidential by or under rules adopted by the supreme court of Indiana.” IC 5-14-3-4(a)(8).

In denying your record request seeking a list of the names of the jurors who served in the Edward Corcoran trial, the Clerk cited to this provision and to two rules of the Indiana Supreme Court alleged to require the nondisclosure. Specifically, Indiana Administrative Rule 9 provides for the confidentiality of court records generally, and specifically declares records containing “[p]ersonal information relating to jurors or prospective jurors not disclosed in open court” confidential and provides that such records shall not be disclosed except for the use of the parties and counsel. Admin. R. 9(L). Indiana Jury Rule 10 governs juror safety and privacy and similarly provides that “[p]ersonal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel.” J.R. 10. That rule further provides that the “court shall maintain that confidentiality to an extent consistent with the constitutional and statutory rights of the parties.” J.R. 10.

The Clerk’s response indicates that the informations you are seeking, the jurors’ names, were not disclosed in open court. No evidence before me suggests otherwise. Thus, at issue is whether the jurors’ names are “personal information relating to jurors” and thus subject to these rules.<sup>4</sup> In my opinion the names of the jurors fall within the mandatory nondisclosure provisions of these rules. Certainly, the plain language of the rules do not suggest that some items of personal information not disclosed in open court can or should be parsed out from other items of personal information not disclosed in open court. Moreover, the fact that the Allen County court operated in such a manner as to avoid open court identification of the jurors evidences that court’s understanding that all of the information about the jurors including their names was personal information that should be protected from disclosure. Our state supreme court has similarly recognized that the “names” of jurors are personal information that should not be subject to disclosure except under extraordinary and limited circumstances. *See Matheney v. State*, 688 N.E.2d 883, 894 (Ind. 1997), *overruled on other grounds*, *Jackson v. State*, 709 N.E.2d 326, 329 (Ind. 1999). In *Matheney*, the petitioner on post-conviction review moved the post-conviction court to order the jury commissioner to disclose the names of the jurors and alternates at Matheney’s trial, so he could investigate whether the jury had been exposed to any extraneous influences. The post-conviction court denied Matheney’s motion because there had been no indication of any outside influences on the jury justifying such an order. The post-conviction court reasoned that until a petitioner makes an initial showing of a reasonable belief that the jury might have been improperly influenced, the jurors’ interests in privacy and repose outweigh a petitioner’s interest in uncovering possible improper influences on a jury. The supreme court agreed, noting that “protection of the jurors’ interests in privacy and repose is ample reason to require some hint of a problem before granting a motion to disclose the jurors’ names.” *Matheney*, 688 N.E.2d at 894. *Cf. Stinson v. State*, 262 Ind. 189, 313 N.E.2d 699 (Ind. 1974) (affirming denial of request to set aside the jury’s verdict supported by juror affidavits claiming impermissible irregularities in deliberation, because an opposite ruling would lead to

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<sup>4</sup> I note your assertion that Jury Rule 10 was not in place at the time of the Corcoran trial. The Rule was effective January 1, 2003. I do not think that the effective date of the rule defeats its application inasmuch as the rule governs a procedural matter. Even so, Administrative Rule 9 provides the same requirements for nondisclosure.

juror harassment by both sides of litigation resulting in an “unconscionable burden upon citizens who serve on juries”).<sup>5</sup>

Based on *Matheney* and the plain language of the supreme court rules cited by the Clerk in denying your request, it is my opinion that the jurors’ names fall within the rules and may not be disclosed “unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery.” IC 5-14-3-4(a). In support of disclosure, you cite to Indiana Code 33-4-11-19. You also cited to that statute when making your request to the Clerk. The statute governs the process for selecting qualified jurors from a master list, and provides that the names of qualified jurors and the contents of their jury qualification forms shall not be made public until the period of service for those jurors expires. IC 33-4-11-19(e). This statute does not require the disclosure of the names of jurors who actually sit on a given jury. Rather, the statute applies only to disclosure of the names or identifying numbers of persons selected as “qualified jurors” and not to the names or identifying numbers of persons who are actually selected to sit on a jury.<sup>6</sup>

#### CONCLUSION

Your request seeks information that has been declared confidential by rules of the state supreme court. Accordingly, it is my opinion that the Clerk did not violate the APRA when she denied you access to the records you requested in your February 12, 2004, request.<sup>7</sup>

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Ms. Therese M. Brown

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<sup>5</sup> See also Proposed Revision of Indiana Administrative Rule 9, Commentary following Rule 9(A) governing Scope and Purposes, accessible at <http://www.in.gov/judiciary/orders/rule-amendments/2004/0204-admin-rule9.html> (wherein the Task Force on Access to Court Records recognized those circumstances where access to information may lead to or increase risk of harm to individuals, such as to persons who are not in court voluntarily but rather were brought into court by the parties or the government; “Care should be taken that the privacy rights and interests of such involuntary parties or ‘third’ persons are not unduly compromised.”).

<sup>6</sup> The Clerk initially advised you that this statute applied only to Porter County. The statute actually applies only to counties that elect to follow the procedure set forth therein for selection of jurors. I understand the Clerk’s response to your complaint to clarify her earlier response and to advise you that the Corcoran jury was selected from a qualified jury pool drawn from Porter County. Assuming Porter County utilized the provisions in Indiana Code 33-4-11 to create the jury pool from which the Corcoran jury was selected, you may be entitled to obtain from the jury commissioner of that county the names or identifying numbers of the persons who composed that jury pool.

<sup>7</sup> You do not claim that the Clerk violated the APRA by submitting an untimely response. See Note 1 above.