

May 12, 2004

Mr. Jeffrey Bringle, No. 137831
Putnamville Correctional Facility
1946 West U.S. Highway 40
Greencastle, Indiana 46135

*Re: Formal Complaint 04-FC-67; Alleged Denial of Access to Public Records
by the Bartholomew County Superior Court No. 2*

Dear Mr. Bringle:

This is in response to your formal complaint alleging that the Bartholomew County Superior Court No. 2 (Court) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when that office failed to produce records responsive to your record request within a reasonable time of receipt of that request. A copy of the Court's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Court did not violate the APRA.

BACKGROUND

This complaint follows your request for access to audio tapes of various hearings conducted in the Court. This office previously found the Court in violation of the APRA when it responded to your request and sought search and other inspection fees not allowed by statute. Upon receipt of that advisory opinion from this office, you renewed your request and sought copies of the recordings, and the Court agreed to produce those copies. Your renewed request was submitted on March 12, 2004. On March 16, 2004, the Court's staff responded in writing and advised that the tapes were being copied. The Court did not indicate a date certain when it would produce the tapes or otherwise contact you regarding the status of complying with your request. On April 8, 2004, you signed and submitted this complaint alleging that the Court violated the APRA by failing to produce responsive records in a timely manner. The Court responded to your complaint on April 19, 2004. The Court avers first that it received your request for copies on March 15, 2004, and that it responded in writing within 24 hours as required by statute. The Court further asserts that it is not required to produce records within that period of time, but only to respond to the request and that it had a reasonable time for production. Finally, the Court avers that it has now fully produced to you copies of all of the tapes you requested at no cost to you.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. This office has frequently and long held that a timely response to the request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily

prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. There are practical reasons for such a rule. A public agency may be able to produce public records immediately in some cases, but more time may be required for production when records are not in a central repository, are archived off-site, include information that may require counsel or other review for confidentiality, or include disclosable and nondisclosable information that the public agency must separate for purposes of producing what is disclosable. Other factors related to the business functions of the office and duties of the staff responsible for that production as well as the nature and circumstances surrounding the records requested may effect resolution of the question. At bottom, interpreting Indiana Code 5-14-3-3 and 5-14-3-9 to require public agencies to produce records within a specific period of time would have the effect, in some cases, of requiring public agencies to stop activity on all other matters in order to provide the records requested. While providing information is an essential function of public agencies, the APRA also specifically provides that public agencies shall regulate any material interference with the regular functions or duties of their offices. IC 5-14-3-1; IC 5-14-3-7(a).

Your request sought copies of audio recordings of multiple hearings. The request was made on March 12, 2004, and according to the Court's response was fully satisfied on April 12, 2004. The Court's response indicated that to achieve production it purchased "equipment necessary to copy the tapes in a form which could be heard by [you]."¹ In my opinion the time for production of copies of recordings of multiple hearings, even without the circumstance of the public agency purchasing equipment to make copies of the requested records, was not unreasonable under the statute.²

CONCLUSION

For the reasons set forth above, I find that the Court did not violate the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: The Honorable Roderick D. McGillivray

¹ That purchase, by the way, was not required under the plain language of the statute or by any prior opinion of this office. *See* IC 5-14-3-8(e) ("[I]f a public agency does not have reasonable access to a machine capable of reproducing the record ... the person is only entitled to inspect and manually transcribe the record."). In the prior opinion issued in this matter, this office noted that the Court had not asserted that it did not have the ability to make copies of the records requested.

² While I do not find the time for production unreasonable, I do note that in keeping with the burden of production imposed upon it by the statute, the Court's written acknowledgment of your request should have provided you with a date certain for production or a date of promised further communication regarding the status of compliance with your request.