

December 14, 2006

*Sent Via Facsimile*

Ted Czanderna  
7104 E. Morris Avenue  
Terre Haute, IN 47805

*Re: Formal Complaint 06-FC-199; Alleged Violation of the Access to Public Records Act by the Vigo County Superior Court 4*

Dear Mr. Czanderna:

This is in response to your formal complaint alleging that Vigo County Superior Court 4 (“Court”) violated the Access to Public Records Act by refusing you a copy of a tape of the court proceedings you requested. I find that the Court is required to provide you a copy of the tape unless it is exempt under section 4 of the Access to Public Records Act.

#### BACKGROUND

You requested audio tape recordings from two hearings involving a matter to which you are a party. The hearings were held September 15 and November 8, 2006. You had also requested of the court reporter transcripts of the proceedings, but seek copies of the audiotapes in addition to or in lieu of the transcripts.

You claim that the Court has denied you the copies. I sent a copy of your formal complaint to the Court. As of today, I have not received any formal response. From my conversation with the Court’s secretary of today, the Court has received your request for a tape but has determined that it will not comply with your request to receive a copy of the tape. You have left a message today stating that the Court has agreed to allow you to listen to the tape at the Courthouse, but the Court will not allow you to have a copy.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). The Access to Public Records Act shall be liberally construed to implement the policy of openness 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. Ind. Code 5-14-3-1. The Court is a public agency under the APRA. IC 5-14-3-2(l)(1).

If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

(1) the denial is in writing or by facsimile; and (2) the denial includes:

(A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and

(B) the name and the title or position of the person responsible for the denial.

IC 5-14-3-9(c).

A court is required to withhold a record that is declared confidential by or under rules adopted by the supreme court of Indiana. The Indiana Supreme Court has adopted Administrative Rule 9. Disclosure of court records is subject to Administrative Rule 9. Administrative Rule 9 does not specifically limit access to tape recordings of court hearings. 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*. Requiring the person to purchase a transcript of the hearing may be so costly as to constitute a denial of access to the record, states the *Handbook*. The *Public Access to Court Records Handbook* can be accessed at <http://www.in.gov/judiciary/pubs/>.

The policy as set out in the *Handbook* is consistent with the Access to Public Records Act. To sustain its burden to deny a record, the Court is required to state the exemption or exemptions that authorize the Court to deny the tape recording of these hearings. Because the Court has not provided a basis for withholding the record, I must find that the Court has violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Honorable Christopher A. Newton