



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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November 7, 2012

CaNon Harper  
DOC 211235  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 12-FC-325; Alleged Violation of the Access to Public Records Act by the Clark County Circuit Court*

Dear Mr. Harper:

This advisory opinion is in response to your formal complaint alleging the Clark County Circuit Court ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Judge Jerry Jacobi responded in writing to your formal complaint. His response is enclosed for your reference. I have granted your request priority status pursuant to 62 Indiana Administrative Code 1-1-3(3).

## BACKGROUND

In your formal complaint, you allege that you submitted a motion to the Court requesting certain transcripts for hearings held during your criminal proceedings. You provide that the Court denied your request. Thereafter, you allege that your wife contacted the Court to obtain an audio recording of the hearings, to which you allege she was informed that the information could be obtained through your attorney. You allege that your attorney has attempted to obtain the records in question and has also been denied. You provide that you are preparing to file a Post-Conviction Relief and are required to list all grounds that warrant your relief from conviction.

In response to your formal complaint, Judge Jacobi advised that the Court has contacted your attorney, Bart Betteau, regarding this matter. Mr. Betteau has already been provided a complete transcript of the proceedings. Mr. Betteau's office advised the Court that it has not requested any records from the Court regarding your case. The Court has received from Mr. Betteau's office its suggestion to provide you with copies of the disks from all of your previous court appearances, hearings, trial, and sentencing. The Court will be mailing a copy of all such records to you on November 9, 2012. The Court does not currently have the original transcript or recording of proceedings in its possession, as it has yet to be returned from the appellate court.

## ANALYSIS

The public policy of the APRA states that “(p)roviding 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.” *See* I.C. § 5-14-3-1. The Court is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Court’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The APRA provides the right to inspect and copy records of a public agency. However, it is separate and distinct from other court proceedings, both civil and criminal. To the extent you challenge the Court denial of your motion for transcripts pursuant to Cause No. 10-D02-0811-378, such issues would be outside the purview of this office. As to your request made pursuant to the APRA, the Court has advised your attorney’s office that copies of all disks from your court appearances, hearings, trial, and sentencing will be mailed to you on Friday, November 9, 2012. The Court has noted that any request for a transcript of the proceedings will be considered after the original transcript is returned to the Court by the appellate court. The Court noted that it has previously provided a copy of the complete transcript of your proceedings to your attorney. Based on all that has been provided, it is my opinion that the Court has not violated the APRA.

I would note for all parties that the APRA permits a public agency to charge a fee for copies of public records. *See* I.C. § 5-14-3-8. Additionally, a public agency may require a person to pay the copying fee in advance. *See* IC 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. The Court would be under no obligation pursuant to a request made via the APRA to waive any fee in regards to the reproduction of an audio or written record. Lastly, the APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). To the extent that you have requested copies of records that have already been provided, the Court would not be required under the APRA to provide multiple copies of an identical record.



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## CONCLUSION

For the foregoing reasons, it is my opinion that the Court did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Judge Jerry Jacobi