



STATE OF INDIANA

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May 6, 2016

Mr. Terrence Fuqua - DOC # 935124
Wabash Valley Correctional Facility
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 16-FC-78; Alleged Violation of the Access to Public Records Act by the Allen County Superior Court

Dear Mr. Fuqua:

This advisory opinion is in response to your formal complaint alleging the Allen County Superior Court ("Court") and Court Executive, Mr. John McGauley violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Court has responded via Mr. McGauley. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 4, 2016.

BACKGROUND

Your complaint dated March 21, 2016 alleges the Allen County Superior Court violated the Access to Public Records Act by improperly denying your records request.

On December 28, 2015 you requested a copy of the audio recording of a May 31, 2012 hearing before Magistrate Samuel Kierns. On March 17, 2016 your request was denied because the court does not have assurance you will not alter or disclose the record.

On April 19, 2016 the Court responded via Mr. McGauley. He reasserted the original denial under *Indiana Administrative Rule 10 and Rule 2.17 of the Indiana Code of Judicial Conduct*, because there is no assurance you will not alter or broadcast the record.

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 Ind.*

Code § 5-14-3-1. The Allen County Superior Court is a public agency for the purposes of the APRA. *See Ind. Code § 5-14-3-2(n)(1).* Accordingly, any person has the right to inspect and copy the Court's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Ind. Code § 5-14-3-3(a).*

I have previously addressed this very issue in *Opinion of the Public Access Counselor 16-FC-13*. In that Opinion I stated the following:

In this case, the Court has stated it is denying your request under Indiana Administrative Rule 10 and Rule 2.17 of the Indiana Code of Judicial Conduct, due to the fact there is no assurance you will not alter or broadcast the record. This Office has long held the Rules of the Judiciary and the Access to Public Records Act can be read together consistently. When it comes to audio recordings, unless there is actual or constructive notice or a reasonable belief that a requestor intends to broadcast or alter proceedings, it should be disclosed upon request. It is my hope the Court will carefully examine its stance and proceed accordingly.

Both the Access to Public Records Act and Administrative Court Rules begin with the presumption court records are disclosable. I interpret both authorities to imply that unless there is a reasonable belief public records will be altered or otherwise fraudulently misused, then they should be released upon request. Nothing in the information provided to this Office creates the inference that these recordings are at risk of being misappropriated by you. The mere fact you are an inmate does not create a condition precedent to insinuate you will alter the recordings.

As for Rule 2.17 of the Indiana Code of Judicial Conduct, this only applies during court proceedings:

Except with prior approval of the Indiana Supreme Court, a judge shall prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto *during sessions of court or recesses between sessions.*

Emphasis added.

This provision contemplates contemporaneous public airing of recordings of court proceedings while the court is in session while a particular case is being adjudicated. It prohibits the transmission of those recordings simultaneously with the proceeding – not the dissemination of public records after the fact. It is my opinion Rule 2.17 only applies to broadcasting a record in real-time and excludes recording from the Courtroom, but does not serve to prohibit access to recordings the court itself makes.

It is the experience of this Office that presently-incarcerated inmates receive recordings of court proceedings on a regular basis with no jeopardy to the integrity of court records.

Unless the Court can show definitely there is a reasonable risk of alteration, it should release the records to you.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. John McGauley