

DANIEL BREWINGTON,

Plaintiff,

v.

DEARBORN SUPERIOR COURT II/
JUDGE SALLY MCLAUGHLIN,

JUDGE BRIAN HILL,

COURT REPORTER BARBARA
RUWE

Defendants.

) IN THE

) DEARBORN COUNTY, INDIANA

)SS:

) CAUSE NO.

15D02-1702-PL-013

FILED

FEB 21 2017

Rm. NJ
CLERK OF DEARBORN CIRCUIT CO.

COMPLAINT UNDER INDIANA ACCESS TO PUBLIC RECORDS ACT

("APRA") AND FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff Daniel Brewington ("Brewington") brings this complaint under the Indiana Access to Public Records Act against Defendants for failing to disclose public records as required by law.

NATURE OF THE ACTION

This is a complaint under the Indiana Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 *et. seq.* In violation of APRA, the above Defendants failed to produce in full, certain public records; specifically, the entire audio record from the grand jury proceedings pertaining to Cause No. 15D02-1103-FD-00084, which occurred on February 28, 2011, March 1, 2011, and March 2, 2011.

Brewington seeks: (a) a declaration that Defendants failed to comply with APRA, (b) an injunction commanding the Defendants to disclose without alteration

or redaction the records requested in Brewington’s APRA request dated January 29, 2016; and (c) an order awarding Brewington any attorneys’ fees and costs of bringing this lawsuit.

PARTIES

Brewington is a member of the public and the target of the grand jury proceedings in question. Brewington initiates this action per the advice of the Office of the Public Access Counselor.

1. **Dearborn County Superior Court II** (“DSC”) is a “public agency” for the purposes of the APRA, see Ind. Code § 5-14-3-2(n)(1), which maintains the grand jury records in question. On all relevant matters discussed below, the actions of the Dearborn Superior Court II are overseen and/or administered by, at least, the following three individuals:

2. Dearborn Superior Court II **Judge Sally McLaughlin** (“McLaughlin”), formerly Blankenship;

3. Rush Superior Court **Judge Brian Hill** (“Hill”), Special Judge presiding over Cause No: 15D02-1103-FD-00084.; and

4. **Barbara Ruwe** (“Ruwe”), Chief Court Reporter for the Dearborn Superior Court II.

JURISDICTION AND VENUE

5. Jurisdiction is granted to this Court under IC 5-14-3-9(e).

6. Venue is proper in Dearborn County under 5-14-3-9(e) because the Dearborn Superior Court II is in Dearborn County, Indiana.

FACTUAL BACKGROUND

7. The Dearborn Superior Court II failed to release complete public records, necessitating this action.

8. On January 15, 2011, Dearborn County Prosecutor F. Aaron Negangard (“Negangard”) made Brewington a target of a grand jury investigation for making “over the top” and “unsubstantiated statements” about officials operating within the Dearborn County Court System. Negangard initiated the grand jury investigation just five days after the Indiana Supreme Court dismissed a complaint against Negangard that was filed by Brewington.¹

9. Brewington was indicted, arrested, and convicted in the Dearborn County Superior Court II under Cause No. 15D02-1103-FD-084.

10. In a petition dated March 8, 2011, the Dearborn County Prosecutor F. Aaron Negangard² (“Negangard”) filed the State’s Praecipe, directing the Court

¹ Brewington provides information regarding his criminal prosecution to explain why the grand jury records are subject to release and to demonstrate the malicious nature of Brewington’s prosecution, which provides insight as to why the defendants have remained vigilant in not complying with the APRA.

² Negangard now serves as Chief Deputy to Indiana Attorney General Curtis Hill.

Reporter of the Dearborn Superior Court II “to prepare and certify a full and complete transcript of the grand jury proceedings in this cause of action.” Attached as “Exhibit A”.

11. On June 15, 2011, Barbara Ruwe (“Ruwe”), Chief Court Reporter for the Dearborn Superior Court II certified the transcription of the grand jury proceedings in Brewington’s case to be “full, true, correct and complete.” Certification attached as “Exhibit B”.

12. During a pretrial hearing on July 18, 2011, Dearborn Chief Deputy Prosecutor Joeseeph Kisor instructed Brewington to rely on the complete transcription of the grand jury proceedings to determine the nature of the non-specific, general indictments. It was not until long after Brewington’s release from prison in September 2013 that Brewington discovered the transcripts were not complete.³ The Office of the Dearborn County Prosecution successfully prosecuted Brewington while maliciously withholding evidence and charging information.

13. On January 29, 2016, Brewington sent an APRA request to Dearborn County Superior Court II seeking the audio from the grand jury proceedings pertaining to Cause No: 15D02-1103-FD-00084.

³ For the convenience of this Court, a copy of the 340-page Grand Jury Transcripts can be viewed at http://www.dadsfamilycourtexperience.com/Grand_Jury_Transcript.pdf

14. In an order dated February 4, 2016, Hill wrote, “The Court declines to grant the request for audio recordings from the Grand Jury proceeding occurring on February 28, 2011, March 1, 2011, and March 2, 2011. Mr. Brewington has alleged that these audio recordings were admitted into evidence at his criminal trial, however, the Court finds that they were not, and there's been no sufficient reason set forth which would necessitate the release of said audio recordings.”⁴ A copy of Hill’s order attached hereto as “Exhibit C”.

15. On March 3, 2016, Brewington filed a complaint with the PAC.

16. The PAC issued an advisory opinion dated April 14, 2016 that found Hill’s reasoning in denying the release of the Grand Jury Audio failed to meet any statutory exception under Indiana law. PAC opinion attached hereto as “Exhibit D”.

17. In a letter dated July 14, 2016 Chief Court Reporter for DSC Barbara Ruwe (“Ruwe”) informed Brewington the audio disc containing the Grand Jury Audio was available at a cost of \$300.00.

18. On July 19, 2016 Brewington obtained a CD-R the Dearborn Superior Court II purported to be a copy of the audio record from the Grand Jury in question.

⁴ Hill’s relies on “alternative facts” in Hill’s contention that Brewington alleged the grand jury audio was admitted as evidence during trial. There is no evidence of Brewington ever claiming that the grand jury audio was admitted as evidence.

19. Upon review of the file format of the audio and the audio itself, it is clear that the Dearborn Superior Court II altered the grand jury record.

20. The copy of the Grand Jury Audio provided by the Dearborn Superior Court II contains less content than the transcription of the same audio.

21. The file format of the audio is not the same format normally employed by the Dearborn Superior Court II.

22. The Dearborn Superior Court II omitted all content of the Grand Jury Audio prior to witness testimony in addition to other parts of the audio throughout the proceedings.

RIGHT TO PUBLIC INSPECTION

The Grand Jury Audio is a public record subject to release because the transcript of the grand jury proceeding is already public record. In the APRA, the Indiana Legislature declared “that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them.” IC 5-14-3-1. The APRA specifically places 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. Pursuant to Ind. Code § 5-14-3-6, redactions should be made with precision so non-disclosable records are separated from disclosable material. In the present case, the court staff of the Dearborn Superior Court II selectively omitted portions of the Grand Jury record without redactions and without the direction of a judicial order.

OBSTRUCTING THE RELEASE OF GRAND JURY AUDIO

Complicating matters in this case is the fact Dearborn Superior Court II Judge Sally McLaughlin has deferred any rulings on the release of the records in question to Special Judge Brian Hill. Though it may appear proper under Indiana law, McLaughlin has also used this deferment to turn a blind eye and protect the court staff from any scrutiny resulting from the alteration of grand jury records. Hill originally ordered the release of the Grand Jury Audio on January 12, 2012. In the DSC order filed January 12, 2012 [Attached as "Exhibit E"], Hill ordered the Court Reporter to "prepare compact disc audio recordings" of the "Grand Jury proceedings of February 28, 2011, March 1, 2011, and March 2, 2011" as well as court audio from several hearings in Brewington's criminal proceedings.

Following the January 12, 2012 order from the DSC, an unknown entity contacted Hill and persuaded Hill to not order the release of the Grand Jury Audio. In an order filed February 02, 2012, Hill stated

"Subsequent to the issuance of those two Orders, the Court has discovered that no audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011, and March 2, 2011 were admitted into evidence in this cause, therefore, these audio recordings are not a record in these proceedings." "For the above stated reasons, the recipients' request for audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011 and March 2, 2011 and a Pretrial Hearing for July 18, 2011 are rendered moot because there are no such audio recordings existing in this case." [Order attached hereto as "Exhibit F"]

Hill still allowed the release of the trial audio in Brewington's case despite the trial audio also not being admitted into evidence.

Hill denied Brewington's request for the grand jury audio on different grounds than prior requests. In an order dated February 4, 2016 [Attached as "Exhibit G"], Hill placed the burden on Brewington to set forth "sufficient reason...which would necessitate the release of said audio recordings." Not only does the APRA not require the public to provide the reasoning behind a public record request, Hill failed to place the same burden on prior requests for records. Hill's order denying Brewington's request for Grand Jury Audio made no mention of deeming prior requests for Grand Jury Audio "moot." Hill told the PAC,

"I am aware that the statute allows the judge who presided over the criminal trial to make decisions as to the release of grand jury information related to the criminal charges, however, I did not feel it was appropriate in this case."

Hill's reasoning serves an admission that Hill's prior orders denying access to the Grand Jury Audio were simply attempts to obstruct public access to the Grand Jury Audio.

CLAIMS OF INTERTWINING GRAND JURY RECORDS

In an order filed April 20, 2016, Hill offered a new explanation in denying full access to the Grand Jury Audio. [Attached as "Exhibit H".] Hill's order states,

"It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings."

Hill's claim is false. Any contention that other grand jury investigations intertwined with the audio record of the investigation of Brewington would require redactions in the transcription of the Grand Jury Audio. The transcripts would have also reflected former Dearborn County Prosecutor F. Aaron Negangard notifying the grand jury which investigation was currently before the grand jury. Hill failed to set a hearing to confirm the existence of "four to five other Grand Jury proceedings" or allow Brewington the opportunity to argue why public interest outweighs protecting the confidentiality of other grand jury proceedings that may or may not have occurred. Hill failed to cite Hill's unnamed source(s) who made ex parte arguments against the release of the Grand Jury Audio from the grand jury investigation of Brewington's writings.

CONCLUSION

Ruwe prepared an "abridged" transcription of a grand jury record, absent an order from any court authorizing Ruwe to do so and then the Dearborn Superior Court II unsuccessfully attempted to alter the audio to match Ruwe's transcription. Regardless of whether Negangard, now Chief Deputy Attorney General of the State of Indiana, played any role in altering grand jury records, Negangard knowingly used the tampered grand jury record to gain an unconstitutional advantage in depriving Brewington of charging information and evidence in a criminal trial. This is not a question of "if" any misconduct occurred, but rather a question of how much misconduct occurred. The Grand Jury Audio already obtained by Brewington on July 19, 2016, does not include all of the information existing in the transcription of

the same audio. The Dearborn Superior Court II also altered the names and format of the audio files. The release of the complete unedited grand jury audio related to Cause No. 15D02-1103-FD-00084 will determine the extent of the misconduct by Dearborn Superior Court II in altering grand jury records as well as providing insight into Negangard's abuse of the grand jury process.

RELIEF REQUESTED

Brewington seeks disclosure of an unedited official copy of the Audio Record from the Grand Jury proceedings relating to Cause No. 15D02-1103-FD-00084. The audio sought in the preceding paragraph is a public record subject to release per the Office of the Public Access Counselor. Brewington requests this Court to set a hearing to ensure the defendants do not have the opportunity to further confuse the facts of this case. Brewington requests all fees and expenses associated with bringing this action.

Brewington also requests that this Court consider issuing an order barring the Office of the Indiana Attorney General from providing representation in this case, or in the alternative, setting a hearing on the matter. A conflict of interest arises given that the release of the Grand Jury Audio will demonstrate how Indiana Chief Deputy Attorney General F. Aaron Negangard abused the grand jury process and then proceeded to use altered grand jury records to obtain unconstitutional indictments and convictions while serving as the Dearborn County Prosecutor.

WHEREFORE, Brewington requests that this Court: (1) issue a declaratory judgment in Brewington's favor that the DSC failed to comply with the rules and procedures defined by the APRA; (2) enter an injunction ordering the Court Reporter of the Dearborn Superior Court II to promptly produce the entire unedited audio record of the Grand Jury Proceedings relating to Cause No. 15D02-1103-FD-00084, or in the alternative, set a hearing to give interested parties the opportunity to present a case in support or opposition to the release of the Public Record; (3) award Brewington any attorneys' fees and costs in prosecuting this action; (4) issue an order barring the Office of the Attorney General from representing the Defendants in this cause of action, and (5) award Brewington any other appropriate relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel P. Brewington", with a stylized flourish extending to the right.

Daniel P. Brewington
Plaintiff, pro se

EXHIBIT A

STATE OF INDIANA)
COUNTY OF OHIO) SS: IN THE DEARBORN SUPERIOR COURT II
STATE OF INDIANA)
V.)
DANIEL BREWINGTON) GENERAL TERM, 2011
CAUSE NO. 15D02-1103-FD-084

FILED
MAR 07 2011
Clerk of Dearborn Circuit Court
J. D. Williams

PRAECIPE

Comes now the State of Indiana by F. Aaron Negangard, Prosecuting Attorney for the Seventh Judicial Circuit, and praecipes the Court Reporter of the Dearborn Superior Court II to prepare and certify a full and complete transcript of the grand jury proceedings in this cause of action.

F. Aaron Negangard
F. Aaron Negangard
Prosecuting Attorney
Seventh Judicial Circuit
Dearborn County Courthouse
215 West High Street
Lawrenceburg, IN 47025
TX (812) 537-8884
ISB #18809-53



EXHIBIT B

STATE OF INDIANA

COUNTY OF DEARBORN

Grand Jury
Daniel Brewington

IN THE DEARBORN SUPERIOR II COURT

REPORTER'S CERTIFICATE

I, Barbara Ruwe, Reporter of the Dearborn Superior Court II, Dearborn County, State of Indiana, do hereby certify that I am the court reporter of said Court, duly appointed and sworn to report the evidence of causes tried therein.

That upon the hearings of the grand jury in this cause, I transcribed all of the statements of the witnesses given during the hearings.

I further certify that the foregoing transcript, as prepared, is full, true, correct and complete.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Seal this 15 day of June, 2011.

Barbara Ruwe

Barbara Ruwe
Dearborn Superior Court II
Dearborn County, Indiana

Exhibit C

STATE OF INDIANA

IN THE DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA

FILED

vs

FEB 04 2016

DANIEL BREWINGTON

Rm NJ
CLERK OF DEARBORN CIRCUIT COURT**ORDER ON REQUEST FOR RELEASING AUDIO RECORDINGS**

COMES NOW Daniel Brewington having made two (2) separate written requests for copies of audio discs from various proceedings regarding the above referenced cause.

And the Court having reviewed said requests now **FINDS** and **ORDERS** as follows:

1. The Court declines to grant the request for audio recordings from the Grand Jury proceedings occurring on February 28, 2011, March 1, 2011, and March 2, 2011. Mr. Brewington has alleged that these audio recordings were admitted into evidence at his criminal trial, however, the Court finds that they were not, and there's been no sufficient reason set forth which would necessitate the release of said audio recordings.
2. As to Mr. Brewington's second request, the court reporter is hereby ordered to prepare compact disc audio recordings of the following hearings:
 - a. Initial hearing of March 11, 2011 -
 - b. Pretrial hearing of June 17, 2011 -
 - c. Pretrial hearing of July 18, 2011 -
 - d. Bond reduction hearing of August 17, 2011 -
 - e. Final pretrial hearing of September 19, 2011 -
 - f. Jury trial of October 3, 4, 5, and 6, 2011 -
 - g. Sentencing hearing of October 24, 2011



3. Daniel Brewington shall be responsible for a reasonable copying fee pursuant to I.C. 5-14-3-8.
4. The release of these audio recordings are hereby specifically limited to the personal review by Daniel Brewington. The recipient, Daniel Brewington, is barred from broadcasting or in any other way publishing these records in any manner. Violation of this order may result in contempt proceedings.

ALL OF WHICH IS ORDERED this 4th day of February, 2016.


BRIAN D. HILL, Judge
Rush Superior Court

Distribution
Honorable Brian D. Hill
Prosecuting Attorney
Daniel Brewington

Exhibit D



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 14, 2016

Mr. Daniel P. Brewington
2529 Sheridan Drive
Norwood, Ohio 45212

Re: Formal Complaint 16-FC-48; Alleged Violation of the Access to Public Records Act by the Dearborn County Superior Court 2

Dear Mr. Brewington:

This advisory opinion is in response to your formal complaint alleging the Dearborn County Superior Court 2 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Court has responded via Honorable Judge Sally A. McLaughlin and the Honorable Judge Brian D. Hill. The Judges' responses are 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 March 4, 2016.

BACKGROUND

Your complaint dated March 3, 2016, alleges the Dearborn County Superior Court 2 improperly denied your records request for audio recordings of grand jury proceedings in your criminal case.

On January 29, 2016, you submitted a request for public records to Judge McLaughlin for audio discs of grand jury proceedings associated with your criminal case from 2011. Although Judge McLaughlin presides over Superior Court 2, Judge Hill, from Rush County Superior Court, responded to your request as he was the special judge appointed to preside over your specific case.

On February 4, 2016, the Court via Judge Hill issued an order denying the audio recordings of the grand jury proceedings. Public records associated with grand jury proceedings are governed by Ind. Code § 35-34-2-10 and their release is discretionary at the judgment of the Court. While the statute addresses transcripts of those proceedings, audio recordings are not referenced.

The transcripts of the proceedings were indeed made available to you in 2011. You seek the audio recordings to compare with the transcripts. You also seem to take exception to the Court's language stating that individuals who broadcast or publish the records may be held in contempt of 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 Ind. Code § 5-14-3-1. The Dearborn County Superior Court 2 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).

First, it should be noted that although Dearborn Court Superior Court 2 is the custodian of the records in question, Judge Hill presided over the case as special judge and retains exclusive jurisdiction over release of records pursuant to Indiana Rule of Trial Procedure 79(L) superseding the jurisdiction of any other judge previously assigned to the case (including those records associated with proceedings over which he did not preside). Any decisions under the Administrative Court Rules or the APRA would lie solely with Judge Hill. Judge McLaughlin’s response on behalf of the Court is appreciated, however, and duly taken into consideration.

Ind. Code § 35-34-2-10 states:

(a) Except when required to do so by law, a person who has been present at a grand jury proceeding and who knowingly or intentionally discloses:

- (1) any evidence or testimony given or produced;
- (2) what a grand juror said; or
- (3) the vote of any grand juror;

to any other person, except to a person who was also present or entitled to be present at that proceeding or to the prosecuting attorney or his representative, commits unauthorized disclosure of grand jury information, a Class B misdemeanor.

(b) The transcript of testimony of a witness before a grand jury may be produced only:

- (1) for the official use of the prosecuting attorney; or
- (2) upon order of:
 - (A) the court which impaneled the grand jury;
 - (B) the court trying a case upon an indictment of the grand jury; or
 - (C) a court trying a prosecution for perjury;

but only after a showing of particularized need for the transcript.

On January 12, 2012, Judge Hill issued an order giving instruction to the Court Reporter to prepare an audio recording of the grand jury proceedings to a third-party requestor. This order was amended a month later when the Judge was advised they were not admitted into evidence (as previously thought), and the order to produce the audio recordings was vacated. The transcripts of the proceedings have been released and made available to you.

The heart of this issue is whether audio recordings are any different from paper copies for the purposes of public records release. Although the definition of public record includes both (see Ind. Code § 5-14-3-2(o)), there are instances when electronic records are distinguished from paper records. A public agency that maintains records electronically, such as audio recordings, should make reasonable efforts to provide a duplicate of those records. See Ind. Code § 5-14-3-3(d).

When it comes to the judiciary, the APRA is balanced against several other regulatory considerations. For example, pursuant to Administrative Court Rule 9(D)(4), a Court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court. According to the information provided, Judge Hill previously exercised his discretion under Ind. Code § 35-34-2-10 to allow reproduction of the grand jury transcript during the criminal proceedings. Because the case has been adjudicated and the transcript released, it stands to reason that providing you an audio copy of the proceeding would neither prejudice the operation of the court, nor compromise grand jury proceedings. Consider the commentary to Administrative Rule 9:

The objective of this rule is to provide maximum public accessibility to Court Records, taking into account public policy interests that are not always fully compatible with unrestricted access. The public policy interests listed above are in no particular order. This rule attempts to balance competing interests and recognizes that unrestricted access to certain information in Court Records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. This rule recognizes there are strong societal reasons for allowing Public Access to Court Records and denial of access could compromise the judiciary's role in society, inhibit accountability, and endanger public safety.

This rule starts from the presumption of open Public Access to Court Records. In some circumstances; however, there may be sound reasons for restricting access to these records. This rule recognizes that there are times when access to information may lead to, or increase the risk of, harm to individuals. However, given the societal interests in access to Court Records, this rule also reflects the view that any restriction to access must be implemented in a manner tailored to serve the interests in open access.

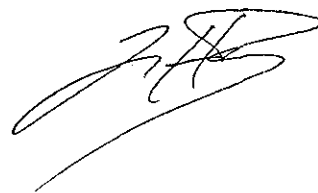
Neither should your reason for wanting the recordings prohibit your access. A requestor of public access should not have to justify the purpose of the request to any public agency, regardless of your intentions or reservations of the agency. With very limited exception, a compelling interest is not required for obtaining access to public records.

Finally, you note the Judge's prohibition on broadcasting or publishing the materials. Under Judicial Code of Conduct Rule 2.17, a judge shall prohibit the broadcasting of information without prior approval of the Supreme Court. A judge may exercise some discretion in certain circumstances, but issuing an Order to prohibit broadcasting generally is appropriate.

RECOMMENDATIONS

Based on the forgoing, it is the Opinion of the Public Access Counselor that because the transcript of the grand jury proceedings have previously been provided to you, a copy of the audio recordings of said proceedings should be released as well. I have spoken with Judge Hill and he has indicated his willingness to amend the February 4, 2016 order and instruct the Dearborn County Court to produce the recordings.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Hon. Judge Sally A. McLaughlin; Hon. Judge Brian D. Hill

DEARBORN SUPERIOR COURT II
JUDGE SALLY A. McLAUGHLIN

215 W. HIGH ST.
2nd FLOOR
LAWRENCEBURG, IN 47025
TELEPHONE 812-537-8800
FAX 812-532-3238

RECEIVED

MAR 17 2016

PUBLIC ACCESS COUNSELOR

facsimile transmittal

To: Mr. Luke Britt
From: Judge Sally McLaughlin
Re: Response to Complaint.
Date: 3-17-16

Fax # 317-233-3091

☐ Urgent ☐ For review ☐ Please comment ☐ Please reply ☐ Please recycle

Thank you for the opportunity to respond. I am sending the original in the mail and I have faxed a copy to Judge Hill.

Confidential



DEARBORN SUPERIOR COURT II

Sally A. McLaughlin, Judge

March 17, 2016

Mr. Luke H. Britt
Office of the Indiana Public Access Counselor
Indiana Government Center South
402 W. Washington Street, Room W470
Indianapolis, IN 46204

RECEIVED

MAR 17 2016

PUBLIC ACCESS COUNSELOR

RE: Complaint 16-FC-48 by Mr. Daniel Brewington

Dear Mr. Britt:

This letter is in response to your request for comment on a complaint by Mr. Daniel Brewington. The complaint is related to requests for grand jury proceedings involving the case of State of Indiana vs. Daniel Brewington, Cause No. 15D02-1103-FD-084, that was filed in Dearborn Superior Court No. 2 on March 7, 2011.

Although I am the Judge of Dearborn Superior Court No. 2, I do not have jurisdiction in this matter. A request was made for a special judge to be appointed by the Indiana Supreme Court on March 17, 2011. The Indiana Supreme Court appointed the Honorable John Westhafer as Special Judge in response to that request. The Indiana Supreme Court appointed the Honorable Brian Hill as Special Judge on June 3, 2011 after the Honorable John Westhafer recused himself. Pursuant to Indiana Rules of Trial Procedure, Judge Hill retains jurisdiction in this matter. Indiana Rules of Trial Procedure, Rule 79(K), provides that upon the certification of a request for the appointment of a special judge, the Supreme Court may order the appointment of a special judge and such order vests jurisdiction in that special judge. Thus, in the matter of State of Indiana vs. Daniel Brewington, jurisdiction is vested in the Special Judge, the Honorable Brian Hill. The Indiana Rules of Trial Procedure further provide that a special judge shall retain jurisdiction of the case through judgment and post judgment matters, Rule 79(L). Therefore, pursuant to the Indiana Rules of Trial Procedure, the Honorable Judge Hill retains jurisdiction in this matter which would include post judgment matters and requests for records.

Mr. Brewington and his relatives have made several requests to the Court to obtain records and address other matters on his behalf over the past few years. Each request has been forwarded to Special Judge Hill who has jurisdiction.

A review of the chronological case summary in this matter, which is a public record, provides that this matter proceeded to a jury trial with verdicts filed and judgment of conviction signed on October 6, 2011. A sentencing order was issued by Special Judge Hill on October 24, 2011. On November 1, 2011, pauper counsel was appointed to represent the Defendant on his appeal. On January 18, 2012, private counsel entered an appearance for the Defendant's appeal. The Indiana Court of Appeals issued an opinion for publication in this matter on January 17, 2013, Brewington v. State, 981 N.E.2d 585 (Ind. Ct. App. 2013). The Indiana Supreme Court accepted transfer and issued an opinion on May 1, 2014, Brewington v. State, 981 N.E.2d 585 (2013). Mr. Brewington ultimately had convictions sustained for Count II, Intimidation of a Judge, a Class D Felony; Count IV, Attempted Obstruction of Justice, a Class D Felony; and Count V, Perjury, a Class D Felony.

Disclosure of grand jury proceedings are controlled by Indiana Code 35-34-2-10 which provides that the transcript of a witness before a grand jury may be produced only:

- (1) For the official use of the prosecuting attorney; or
- (2) Upon order of:
 - (A) The court which impaneled the grand jury;
 - (B) The court trying a case upon an indictment of the grand jury; or
 - (C) A court trying a prosecution for perjury;

but only after a showing of particularized need for the transcript.

This case has progressed beyond the issuing of indictments by the grand jury and has had verdicts returned at a trial by jury over which the Special Judge presided. The Defendant appealed this matter to the Indiana Court of Appeals and the Indiana Supreme Court which have issued published opinions. The Special Judge has knowledge of whether any Grand Jury testimony has been made public in the course of the matter proceeding to trial and has presided over the matter. The Defendant has been represented by pauper and/or private counsel throughout the proceedings.

Indiana Code 35-34-2-10 also provides that unauthorized disclosure of grand jury testimony is a Class B Misdemeanor. The Code does not state that the transcript "shall" be released but rather states "may be produced only" and provides specific circumstances where they may be released. The Statute does not address the release of audio tapes from grand jury proceedings.

Please advise if I can be of any further assistance. Thank you.

Sincerely,


Judge Sally A. McLaughlin

RECEIVED

MAR 17 2016

PUBLIC ACCESS COUNSELOR



RUSH SUPERIOR COURT

DATE: March 8, 2016

INCLUDING COVER: 4

TO: Ms. Dale L. Brewer, Office of the Public Access Counselor

FAX: (317) 233-3091

TELEPHONE #

FROM: Brian D. Hill, Rush Superior
Court Judge

TELEPHONE # (765) 932-2829

SUBJECT: Formal Complaint 16-FC-48

COMMENTS:

HARD COPY: Will not follow in mail

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COURT, 101 East 2nd Street, 3rd Floor Courthouse, Rushville, IN 46173
(765) 932-2829 or (765) 932-3520. FAX # (765) 932-2856

**STATE OF INDIANA****MICHAEL R. PENCE, Governor****PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
Toll Free: 1-800-228-6013
Email: pac@opac.in.gov
Website: www.IN.gov/pac

March 7, 2016

The Honorable Brian Hill, Special Judge
Rush County Superior Court
C/o Dearborn County Superior Court II
215 West High Street, 2nd Floor
Lawrenceburg, Indiana 47025

Re: Formal Complaint 16-FC-48

Dear Judge Hill:

Pursuant to Indiana Code § 5-14-5, a formal complaint has been filed with the Indiana Public Access Counselor concerning an alleged violation(s) of the Access to Public Records Act by the Honorable Brian Hill, Special Judge, Rush County Superior Court, in care of Dearborn County Superior Court II. A copy of the formal complaint is enclosed for your reference.

The Public Access Counselor is required to issue an advisory opinion within thirty (30) business days of receipt of the complaint. His anticipated publication date is April 19, 2016. Pursuant to Indiana Code § 5-14-5-5, a public agency shall cooperate with the counselor in any investigation or proceeding. As such, the response of the Honorable Brian Hill, Special Judge, Rush County Superior Court, in care of the Dearborn County Superior Court II must be received by this office no later than March 22, 2016. Please feel free to fax your response to the number in the letterhead or email it to dabrewer1@opac.in.gov.

Should you have any concerns or inquiries, please feel free to contact our office.

Best regards,

A handwritten signature in cursive script, appearing to read "Dale L. Brewer".

Ms. Dale L. Brewer
Office of the Public Access Counselor

Rush Superior Court

Rush County Courthouse
101 East Second Street
Rushville, Indiana 46173
Phone: (765) 932-2829 / (765) 932-3520
Fax: (765) 932-2856

Brian D. Hill, Judge

Tonya Muckerheide, Court Reporter
Sandra A. Land, Court Administrator

March 8th, 2016

Ms. Dale L. Brewer
Office of the Public Access Counselor
Indiana Government Center South
402 West Washington Street, Rm W470
Indianapolis, IN 46204

Re: Formal Complaint 16-FC-48

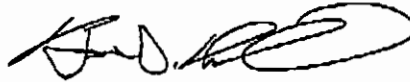
Ms. Brewer,

I am in receipt of the above-referenced complaint dated March 7, 2016. Mr. Brewington's request as to the audio recordings of the Grand Jury proceedings of February 28, 2011, March 1, 2011, and March 2, 2011 was denied by me simply because I did not preside over those proceedings. I was appointed special judge over the criminal case that followed. I am aware that the statute allows the judge who presided over the criminal trial to make decisions as to the release of grand jury information related to the criminal charges, however, I did not feel it was appropriate in this case. Mr. Brewington has had full access to the official transcript of these proceedings. I didn't feel that his latest allegation of a conspiracy between the prosecuting attorney and court reporter was sufficient justification to release an audio record that he already has the transcript to. In addition, we are talking about grand jury proceedings which led to an indictment that went to jury trial and was subsequently affirmed by both the Court of Appeals and Indiana Supreme Court.

Mr. Brewington seems to take offense that orders releasing these recordings prohibit the broadcast or publication of the material, however, I believe that admonishment is required by the Code of Judicial Conduct, Rule 2.17. I have not intended to deprive Mr. Brewington to his right of access to his criminal proceedings. As I said earlier, I did not preside over his grand jury proceedings and did not feel comfortable releasing those hearings in yet another format. If you come to a different conclusion, I would be happy to comply immediately.

If I can be of further assistance or answer any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "B.D. Hill", with a large, stylized loop at the end.

Brian D. Hill
Judge, Rush Superior Court
Special Judge, Dearborn Superior II

Exhibit E

STATE OF INDIANA

DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,

Plaintiff

vs

DANIEL BREWINGTON,

Defendant

FILED

JAN 12 2012

F. Kelly D. Weaver
CLERK OF DEARBORN CIRCUIT COURT**ORDER RELEASING AUDIO COPIES**

COMES NOW THE COURT having received an Access to Public Records Request from Sue A. Brewington, [REDACTED].

And the Court having reviewed said request and being duly advised in the premises now **FINDS** and **ORDERS** as follows:

1. The Court Reporter is hereby **ORDERED** to prepare compact disc audio recordings of the following requested hearings:
 - a. Grand Jury proceedings of February 28, 2011, March 1, 2011 and March 2, 2011.
 - b. Initial Hearing of March 11, 2011.
 - c. Pretrial Hearing of June 17, 2011.
 - d. Pretrial Hearing of July 18, 2011.
 - e. Bond Reduction Hearing of Aug. 17, 2011.
 - f. Final Pretrial Hearing of Sept. 19, 2011.
 - g. Jury Trial October 3, 4, 5, and 6, 2011.
 - h. Sentencing Hearing of October 24, 2011.



2. The Court Reporter is also instructed to prepare a compact disc audio copy of the compact disc admitted into evidence containing the interview of Keith L. Jones by Shane McHenry admitted into evidence on August 17, 2011 and letter read by Daniel Brewington at the September 19, 2011 Pretrial Hearing.
3. Sue A. Brewington shall be responsible for a reasonable copying fee pursuant to I.C. 5-14-3-8.
4. The release of these audio recordings are hereby specifically limited to the personal review of said recordings to Sue A. Brewington of [REDACTED]
[REDACTED] The recipient, Sue A. Brewington, is barred from broadcasting or any way publishing these records in any manner.

Violation of this Order may result in contempt proceedings.

ALL OF WHICH IS ORDERED this 12th day of January, 2012.


BRIAN D. HILL, Special Judge
Dearborn Superior Court II

Distribution:
Honorable Brian D. Hill
Prosecuting Attorney
Bryan E. Barrett
Jeffrey E. Stratman
Sue Brewington



DEARBORN SUPERIOR COURT II
Sally A. Blankenship, Judge

January 13, 2012

Ms. Sue A. Brewington
[REDACTED]
[REDACTED]

Judge Blankenship referred this matter to Judge Hill regarding the release of copies of audio discs from the State vs. Brewington hearings and trial, as Judge Hill was the appointed special Judge in this matter.

Judge Hill has issued the enclosed Order relating to the release of the audio discs.

The cost of copying the discs is being reviewed and the cost you would be responsible for should be able to be calculated and reported to you within the next seven (7) days, prior to copying any discs as you requested. Once this sum is provided, depending on the Court schedule these should be available within the next thirty (30) days.

Exhibit F

STATE OF INDIANA

DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,
Plaintiff

vs

DANIEL BREWINGTON,
Defendant

FILED

FEB 02 2012

Philip D. Weaver
CLERK OF DEARBORN CIRCUIT COURT

AMENDED ORDER RELEASING AUDIO COPIES

COMES NOW THE COURT having previously issued an Order Releasing Audio Copies to Sue A. Brewington on January 12, 2012 and to Matthew P. Brewington on January 24, 2012.

And the Court being duly advised in the premises now **FINDS** that those two orders should be amended as follows:

1. Subsequent to the issuance of those two Orders, the Court has discovered that no audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011, and March 2, 2011 were admitted into evidence in this cause, therefore, these audio recordings are not a record in these proceedings.
2. The Final Pretrial Conference/Bond Reduction Hearing which had originally been set on July 18, 2011 was continued on the State's Motion and no hearing took place on that date. If a telephonic conference with counsel was held on that date, it was merely an effort to reschedule and find an agreeable date and no recordings were made. Therefore, no audio recording exists for July 18, 2011.



3. For the above state reasons, the recipients' request for audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011 and March 2, 2011 and a Pretrial Hearing for July 18, 2011 are rendered moot because there are no such audio recordings existing in this case.

ALL OF WHICH IS ORDERED this 27th day of January, 2012.


BRIAN D. HILL, Special Judge
Dearborn Superior Court II

Distribution:
Honorable Brian D. Hill
Prosecuting Attorney
Jeffrey E. Stratman
Matthew P. Brewington
Sue A. Brewington

Exhibit G

STATE OF INDIANA

IN THE DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA

FILED

vs

FEB 04 2016

DANIEL BREWINGTON

Rm NJ
CLERK OF DEARBORN CIRCUIT COURT**ORDER ON REQUEST FOR RELEASING AUDIO RECORDINGS**

COMES NOW Daniel Brewington having made two (2) separate written requests for copies of audio discs from various proceedings regarding the above referenced cause.

And the Court having reviewed said requests now **FINDS** and **ORDERS** as follows:

1. The Court declines to grant the request for audio recordings from the Grand Jury proceedings occurring on February 28, 2011, March 1, 2011, and March 2, 2011. Mr. Brewington has alleged that these audio recordings were admitted into evidence at his criminal trial, however, the Court finds that they were not, and there's been no sufficient reason set forth which would necessitate the release of said audio recordings.
2. As to Mr. Brewington's second request, the court reporter is hereby ordered to prepare compact disc audio recordings of the following hearings:
 - a. Initial hearing of March 11, 2011 -
 - b. Pretrial hearing of June 17, 2011 -
 - c. Pretrial hearing of July 18, 2011 -
 - d. Bond reduction hearing of August 17, 2011 -
 - e. Final pretrial hearing of September 19, 2011 -
 - f. Jury trial of October 3, 4, 5, and 6, 2011 -
 - g. Sentencing hearing of October 24, 2011



3. Daniel Brewington shall be responsible for a reasonable copying fee pursuant to I.C. 5-14-3-8.
4. The release of these audio recordings are hereby specifically limited to the personal review by Daniel Brewington. The recipient, Daniel Brewington, is barred from broadcasting or in any other way publishing these records in any manner. Violation of this order may result in contempt proceedings.

ALL OF WHICH IS ORDERED this 4th day of February, 2016.


BRIAN D. HILL, Judge
Rush Superior Court

Distribution
Honorable Brian D. Hill
Prosecuting Attorney
Daniel Brewington

Exhibit H

STATE OF INDIANA

DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,
Plaintiff

FILED

vs

APR 20 2016

DANIEL BREWINGTON,
Defendant

Rm [Signature]
CLERK OF DEARBORN CIRCUIT COURT

ORDER ON REQUEST FOR RELEASING AUDIO COPIES (AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011)

Based on an Advisory Opinion issued by the Public Access Counselor, Luke H. Britt, on April 14, 2016, the Court issues the following Order regarding the audio recordings of Grand Jury proceedings conducted in this Court on February 28, 2011, March 1, 2011 and March 2, 2011, hereby amending a previous Order regarding these recordings issued on February 4, 2016.

The Court now **ORDERS** as follows:

1. The Court Reporter is hereby **ORDERED** to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.
2. It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings.
3. Daniel Brewington shall be responsible for reasonable copying fees pursuant to I.C. 5-14-3-8. Additional costs may be required due to the

nature of the Grand Jury proceedings, because of efforts made to maintain the confidentiality of the other proceedings that were conducted simultaneous with the matter regarding Daniel Brewington.

4. The release of these audio recordings are hereby specifically limited to the personal review by Daniel Brewington. The recipient, Daniel Brewington, is barred from broadcasting or in any other way publishing these records in any manner. Violation of this Order may result in contempt proceedings.

ALL OF WHICH IS ORDERED this 20th day of April, 2016.



BRIAN D. HILL, Special Judge
Dearborn Superior Court II

Distribution:
Honorable Brian D. Hill
Prosecuting Attorney
Daniel Brewington

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon parties and counsel of record listed below, by United States mail, first-class postage prepaid, on February 21, 2017

Brian D. Hill, Judge
Judge, Rush Superior Court
101 East Second Street, 3rd Floor
Rushville, IN 46173
(765) 932-3520

Sally A. McLaughlin, Judge
Judge, Dearborn Superior Court II
215 W High St
2nd Floor
Lawrenceburg, IN 47025
(812) 537-8800

Barbara Ruwe, Chief Court Reporter
Dearborn Superior Court II
215 W High St
2nd Floor
Lawrenceburg, IN 47025
(812) 537-8800

Indiana Attorney General Curtis Hill
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 233-6215

A handwritten signature in black ink, appearing to read "Daniel P. Brewington", with a stylized flourish at the end.

Daniel P. Brewington
Plaintiff, pro se