

IN THE SUPERIOR COURT OF DEARBORN COUNTY, INDIANA

DANIEL BREWINGTON,)
)
 Plaintiff,)
 v.)
)
 DEARBORN SUPERIOR COURT II)
 JUDGE BRIAN HILL)
)
 Defendants.)

Case No. 15D01-1007-PL-050

FILED

JUL 14 2016

Rm AT
CLERK OF DEARBORN CIRCUIT COURT

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 Defendant Dearborn Superior Court II (“DSC”) for failure to disclose public records as required by law.

NATURE OF THE ACTION

1. 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 have 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.

2. 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

3. 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.

4. The Dearborn County Superior Court II 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 administered by, at least, the following three individuals: Dearborn Superior Court II Judge Sally McLaughlin ("McLaughlin"), formerly Blankenship; Rush Superior Court Judge Brian Hill ("Hill"), Special Judge presiding over Cause No: 15D02-1103-FD-00084; and 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 located in Dearborn County, Indiana.

FACTUAL BACKGROUND

The Indiana APRA

7. This action is a direct result of the attempts by the Dearborn Superior Court II to obstruct public access to a clearly releasable public record.

8. In an opinion dated April 14, 2016, the Office of the Public Access Counselor made a finding that the audio record from the grand jury proceedings in question should be released because the transcripts and exhibits from the proceedings are already available to the public. Copy of PAC opinion attached as Exhibit A.

9. Brewington brings this complaint per the advice of the PAC. In an email dated May 6, 2016 Office of the PAC advised Brewington that “[Brewington’s] next step would be to file a complaint against Judge Hill in a court of law.” Copy of PAC email attached as Exhibit B.

10. 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.

11. A Public Agency means “Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

The Transcription from the Grand Jury Audio is Incomplete

12. Chief Court Reporter for the DSC, Barbara Ruwe failed to transcribe the entire grand jury proceeding as the transcripts are void of any record of procedural activities that are present in any proceeding involving a grand or petite jury. Page one of the transcripts represent the proceedings commencing at witness testimony. Ruwe still certified the transcript as being full, true, correct and complete¹.

13. There is no court order on record authorizing Ruwe to alter or modify the official record of the Grand Jury proceedings during transcription of the record.

14. There are no redactions in the transcription of the Grand Jury Audio and there is no evidence of any party protesting the release of the Grand Jury Audio other than Hill.

15. Neither Hill nor McLaughlin authorized Ruwe to only record or transcribe specific selections of the Grand Jury proceedings, at least not in an official capacity.

Prior Requests for Audio Record from Grand Jury

16. The Dearborn Superior Court II has issued prior orders addressing requests from other individuals for the records in question dating back to January 12, 2012.

17. 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 C], Hill ordered

¹ 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

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.

18. Following the January 12, 2012 DSC order to release Grand Jury Audio, Hill began advocating against the release the Grand Jury Audio after being contacted by an unnamed source.

19. In an order filed February 02, 2012 [Attached as Exhibit D], 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.”

20. Any party with the authority to privately contact Hill about the Grand Jury Audio not being admitted as evidence would have known the issue to be irrelevant to the APRA request as the record of the Grand Jury was already a released public record via the transcripts from the proceedings, which calls into question the true motives for refusing to release the record.

21. Hill still allowed the release of the trial audio despite the audio not being admitted in any court record.

22. In the same order Hill stated a pretrial hearing on “July 18, 2011 was continued on the State's Motion and no hearing took place on that date.” “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.”

23. The hearing on July 18, 2011 did in fact take place. Transcripts from the July 18, 2016 hearing demonstrate Chief Deputy Prosecutor Joseph Kisor informing Brewington he could rely on a “complete” copy of the grand jury transcripts to clear up any confusion as to what conduct the Prosecution claimed to form the basis of the vague indictments.²

24. It was several years after Brewington’s trial and conviction before Brewington discovered that the Office of the Dearborn County Prosecutor misrepresented the Grand Jury Transcripts as being complete.

Brewington’s request for Grand Jury Audio

25. 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.

26. In an order dated February 4, 2016, Hill stated, “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,

² For the convenience of this Court, a copy of the Transcripts from the July 18, 2011 pre-trial hearing, which Hill claimed did not take place, can be viewed at http://www.dadsfamilycourtxperience.com/Pretrial_Transcript_18JUL11.pdf.

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." A copy of Hill's order attached hereto as Exhibit E.

27. There is no record of Brewington making any claim that the grand jury audio was admitted during trial.

28. The rules defined by the APRA relieves the public of the burden of providing a reason to release public records.

29. On February 8, 2016, Brewington sent an amended request for Grand Jury Audio to correct Hill's erroneous contentions. Brewington received no response from the DSC.

Brewington's Complaint to the Office of the Public Access Counselor ("PAC")

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

31. 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.

32. The PAC provided Brewington a copy of Hill's response to the formal complaint filed by Brewington.

33. Hill's reasoning in refusing to order the release of the Grand Jury Audio was not mentioned in previous orders filed by the DSC. A copy of Hill's March 8, 2016 response is included in the opinion of the PAC.

34. On April 5, 2016, Brewington sent another APRA request to the DSC requesting a copy of the entire transcripts from the Grand Jury proceedings.

Neither Hill nor McLaughlin addressed the matter. Issuing an order to transcribe additional grand jury audio from Brewington's case would acknowledge Ruwe failed to accurately transcribe the grand jury audio. Issuing an order claiming that the 340-page transcript admitted during the criminal proceedings is the extent of the record would acknowledge Ruwe failed to record any procedural communication between Negangard and the Grand Jurors.

35. Every instance where Brewington overcomes an unnecessary and unwarranted hurdle set forth by Hill, Hill simply places new obstacles in Brewington's path in order to obstruct access to the Grand Jury Audio.

DSC Denial has No Legal Foundation

36. The DSC has provided a variety of arbitrary and capricious excuses in denying access to the Grand Jury Audio.

37. In Hill's response to Brewington's formal complaint, Hill initially claims "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."

38. Hill's response makes no mention of deeming prior requests for Grand Jury Audio "moot."

39. Hill stated, "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."

40. Hill rendered his prior reasoning moot by telling the PAC that Hill was aware he always maintained the authority to order the release of the Grand Jury Audio.

41. Hill stated, “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.”

42. The transcription of the grand jury audio is void of any introduction to the grand jurors, instruction of the grand jury process, notation of time, or any explanation of the investigation before them, demonstrating how Hill allowed Brewington to be convicted by a jury while misrepresenting to Brewington that transcripts from the grand jury proceedings were complete.

43. In the absence of an order by Hill or McLaughlin, failure to record or transcribe the official record of the grand jury proceedings would have to be done at the direction of Prosecutor Negangard.

Hill demonstrates that DSC Denial of Access was both Arbitrary and Capricious

44. In addition to listing “appropriateness” as a reason to deny Brewington access to records, Hill’s response to the PAC also stated, “I did not preside over his grand jury proceedings and did not feel comfortable releasing those hearings in yet another format.”

45. This Court will never find a clearer example of arbitrary reasoning than the DSC citing unexplained feelings of comfortability and appropriateness as

reasons to deny access to public records nor will this Court find any greater example of capricious excuse making as Hill made no prior mention of feelings of appropriateness or comfortability in the prior opinions filed by the DSC.

Actions by DSC to restrict Access following PAC Opinion

46. In an order filed April 20, 2016, Hill offers a new explanation in denying Brewington's access to the Grand Jury Audio. A copy of Hill's order filed April 20, 2016 attached hereto as Exhibit F.

47. 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."

48. Aside from Brewington's case, Hill does not retain jurisdiction over any of the grand jury proceedings that Hill claims may or may not be intertwined with Brewington's proceedings. Any claim of additional grand jury proceedings came from an extrajudicial source as Hill had no knowledge of additional grand jury proceedings intertwining with Brewington's.

49. In Hill's original orders filed January 12, 2012 and February 2, 2012, Hill made no mention of any addition grand jury proceedings that may have coincided with Brewington's proceedings that occurred in the prior year.

50. In the time between the opinion of the PAC, dated April 14, 2016 and Hill's April 20, 2016 order, someone allegedly remembered the existence of "four or

five” other grand jury proceedings being intertwined with Brewington’s and contacted Hill outside of an official proceeding in time for Hill to modify the DSC orders to release public records.

51. Hill fails to cite the unnamed source who allegedly provided Hill with the new information.

52. Upon receiving Hill’s newest excuse in denying full access to the Grand Jury Audio, Brewington filed an amended request for all the audio from the grand jury proceedings that allegedly were intertwined with Brewington’s proceeding.

53. Hill sent Brewington a letter dated May 6, 2016, stating Brewington was not “entitled to receive any audio recordings from other Grand Jury proceedings that may have been conducted on those same days with the same Grand Jurors. Copy of Hill’s letter attached as Exhibit G.

54. Not only did Hill place undue burden on Brewington to provide an explanation as to why Brewington sought the records, Hill now places the burden on Brewington to prove whether or not the newly alleged grand jury proceedings actually exist.

The “Four to Five other Grand Jury Proceedings” Do Not Exist

55. Hill’s allegation of the existence of “four or five other grand jury proceedings” being intertwined with Brewington’s grand jury proceedings is patently false.

56. Hill failed to raise the latest excuse by the DSC until over four years after Hill’s initial order granting the release of the Grand Jury Audio.

57. The transcripts from the requested Grand Jury Audio are void of any phrases or statements demonstrating the grand jury proceedings “often going back and forth between all of the cases.”

58. The existence of other Grand Jury proceedings would require an admission that Ruwe failed to record Negangard advising which case was currently before the grand jury.

59. In the alternative, Negangard jumped back and forth presenting evidence in “four to five other grand jury proceedings,” in addition to Brewington’s, while failing to inform the grand jury which investigation was presently before them.

Hill backs off claim of “Four to Five Other Grand Jury Proceedings”

60. In Hill’s May 6, 2016 letter to Brewington, Hill backed off his claim of the existence of “four to five other Grand Jury proceedings being intertwined with Brewington’s.

61. Hill’s May 6, 2016 letter stated Brewington was not entitled to “Grand Jury proceedings that *may have* been conducted on those same days with the same Grand Jurors.”

62. Hill’s newest rationale obstructs Brewington’s access to unedited audio despite the record demonstrating that the additional grand jury proceedings never occurred.

63. Hill’s letter also contains the first claim that the alleged intertwining grand jury investigations were presented to the “same Grand Jurors.” To demonstrate the absurdity of Hill’s contention, one simply has to imagine what

would happen if a judge presided over six criminal trials in a three-day period without making any notation for the record of which case was currently before the court. Then one has to imagine that the judge found it acceptable for one panel of jurors heard all six trials. Applying a reasonable mind test to Hill's logic would clearly find that Hill's contentions are false.

History of ex parte Orders by DSC in Denying Access to Records

64. On at least two occasions, Hill issued rulings based on ex parte communication/evidence.

65. The PAC opinion demonstrates that Hill amended the order dated January 12, 2012 *after* engaging in ex parte communication with an unknown entity.

66. The PAC opinion states, “[The January 12, 2012 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.”

67. There is no record of any hearing on the matter. Brewington nor the public were privy to any ex parte communication between Hill and unknown parties.

68. In regards to the new claims in Hill's April 20, 2016 of grand jury proceedings that may or may not have coincided with Brewington's grand jury proceedings, there is no record of any hearing on the matter and Brewington was not privy to any such conversation.

69. Differentiating Hill's ex parte orders is the timing of the ex parte communication. On February 02, 2012, Hill issued an amended order vacating the order to release based on information from an unknown entity AFTER Hill ordered the release of the Grand Jury Audio. In the case of the current order, someone contacted Hill prior to Hill filing the order restricting access to the official audio record of the Grand Jury.

Hill's Order to Release defies Logic

70. Hill's April 20, 2016 order states, "The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings." The written record of the grand jury is void of examples of affirmative statements by the prosecution stating, "We are back on record in the grand jury investigation of Brewington." In the absence of such statements, it would be impossible for members of the grand jury to know what case was currently before them.

71. The absence of such statements would also make it impossible for Ruwe or any other Court Report to know what portions of the intertwined audio pertained to Brewington's case.

72. Despite Ruwe arbitrarily omitting portions of the grand jury proceedings from the transcripts, Hill orders Ruwe to recreate the audio record at Ruwe's discretion.

Ruwe was Required to Record the Entire Grand Jury Proceeding

73. In *Wurster v. State* 715 N.E.2d 341 (Ind.1999), the Indiana Supreme Court applied Criminal Rule 5 to the recording of grand jury proceedings which provides the recording “of any and all oral evidence and testimony given in all cases and hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto, and any other oral matters occurring during the hearing in any proceeding.”

74. Ruwe’s failure to transcribe or record the entire grand jury proceeding is no accident as keeping record of the entire proceeding is the fundamental responsibility of a court reporter.

Hill has a Propensity for not telling the Truth

75. In Hill’s response to the PAC, Hill stated, “I have not intended to deprive Mr. Brewington to his right of access to his criminal proceedings.” The fact Hill openly admitted that Hill’s previous denials lacked legal standing is evidence of Hill’s attempts to deprive Brewington’s right to the records.

76. Hill explained to the PAC that he denied Brewington’s request for Grand Jury Audio “simply because [Hill] did not preside over those proceedings.” Hill then went on to state, “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.

77. Hill’s finding that the release of the Grand Jury Audio was not “appropriate” in Brewington’s case demonstrates that Hill applied a different

standard to Brewington's APRA request than other members of the public. If Brewington had not followed through with a complaint with the PAC, Brewington would not have known Hill's true reasoning or intentions in denying access to public records.

Role of McLaughlin

78. Brewington is unclear of McLaughlin's role regarding the release of public records but it is clear that McLaughlin actively took an adversarial role against Brewington's requests for Grand Jury Audio.

79. In a letter to the PAC, McLaughlin stated, "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." Copy of McLaughlin letter included in PAC opinion, Exhibit A.

80. There is no record of relatives making "several requests" and "addressing other matters" on Brewington's behalf. In fact, Brewington requested the same public records that were already in possession of family members.

81. Hill's orders to release Court Audio from Brewington's criminal trial limited the review of the audio to the requester only. Hill's order threatened contempt if anyone shared the trial audio. As a result, Brewington was forced to request and pay for his own copy of trial audio despite the fact that two of Brewington's family members were already in possession of the trial audio.

82. McLaughlin failed to provide any explanation for the conflicting orders by the DSC in addressing the "several requests" made by Brewington's family.

83. The only matter addressed by Brewington's family on behalf of Brewington were three motions to dismiss from Brewington that were physically delivered by Sue Brewington on the morning of October 3, 2011, less than an hour before Brewington's criminal trial. Brewington had Sue Brewington deliver the motions because the DSC refused Brewington the ability to meet with an attorney prior to trial, refused to explain what conduct the State alleged to be illegal, and refused to address the unconstitutional components of Negangard's case before the Grand Jury. The only instruction from Negangard to the Grand Jury was Negangard explained the prosecution sought indictments against Brewington for making "over the top" "unsubstantiated statements" against a Dearborn County Judge and psychological witness contracted by the Office of the Dearborn County Prosecutor.

84. While claiming not to have jurisdiction of the matter and irrelevant to Brewington's APRA request, McLaughlin took the time to inform the PAC that the indictments in Brewington's Grand Jury led to convictions, some of which were upheld by the Indiana Supreme Court. McLaughlin failed to explain why her Chief Court Reporter Ruwe failed to transcribe the entire record or notify the court or Brewington of the partial transcription.

85. McLaughlin also informed the PAC that Brewington had representation through all stages of Brewington's criminal trial and appeal. McLaughlin then failed to mention that the prosecution told Brewington to rely solely on the transcripts of the grand jury for charging information to build a defense but failed

to offer any explanation to why Ruwe intentionally deprived Brewington of his rights to charging information. No level of representation can overcome deceptive tactics by the prosecution and court reporter that deprive a defendant of charging information.

86. McLaughlin's animosity towards Brewington can be traced all the way back to McLaughlin's bond order filed after Brewington's arraignment hearing on March 11, 2011. McLaughlin set Brewington's bond at \$500,000 cash and \$100,000 surety in the absence of the prosecution providing any evidence that Brewington was a flight risk and any evidence or examples of Brewington's conduct that the State alleged to be criminal. McLaughlin recused herself from Brewington's case the following week citing a conflict of interest.

87. Two weeks prior to McLaughlin's bond order, Brewington posted a blog concerning McLaughlin's public endorsement of an IT firm in her official capacity as a judge, a violation of the Judicial Code of Conduct.

88. The above is normally irrelevant to a public record request. Brewington only provides the information to address any further attempts by the DSC to smokescreen the issue of Ruwe's incomplete transcription of the Grand Jury proceedings while obstructing access to Grand Jury Audio.

Conclusion

89. Conspiracy is the only explanation as to how a simple APRA request could necessitate a legal action to compel the Dearborn Superior Court II to release the

entire audio record of a Grand Jury proceeding where the transcripts are already public.

90. The information supporting Hill's new findings that Negangard intertwined five to six grand jury investigations before "the same grand jurors" was acquired before Hill's April 20, 2016 order. Either Hill went searching for a reason to deny Brewington full access to the audio record following the opinion of the PAC or someone conducted an investigation of what allegedly occurred over the course of a three-day Grand Jury investigation that occurred well over five years before the opinion by the PAC. The fact that individual proactively reported the information to Hill prior to Hill issuing the ex parte order to release demonstrates Hill sealed portions of a public record while denying any participation from public interest. Brewington and the public were denied the ability to investigate the matter and present a case to Hill prior to Hill's order.

91. The release of the complete unedited grand jury audio related to Cause No. 15D02-1103-FD-00084 will demonstrate Ruwe selectively transcribed the official record of a grand jury proceeding in absence of a court order directing her to do so. If the audio is identical to the transcripts, then Ruwe selectively recorded the proceedings, also a violation of Criminal Rule 5, or simply copied and pasted grand jury audio to cover up misconduct, which is a criminal offense. Regardless of the circumstances, Negangard was aware of the abridged grand jury transcripts and used the incomplete record to the State's advantage in prosecuting Brewington. Even if a party contends someone authorized Ruwe to transcribe only the witness

testimony of the grand jury proceedings, the transcripts are void of any witness testimony on March 2, 2011.

92. The release of the complete unedited grand jury audio will demonstrate someone lied to Hill about “four to five other grand jury proceedings” being intertwined with Brewington’s proceeding. If the “four to five other grand jury proceedings” did take place, Negangard ran up to six grand jury proceedings together without distinguishing one case from the next or Ruwe failed to record or transcribe Negangard making such notations on the record.

93. Hill’s letter to the PAC is an admission that the DSC obstructed access to a public record by issuing orders lacking any legal basis.

94. Both Hill and McLaughlin went on the offensive and attacked Brewington while failing to address Ruwe’s incomplete transcription of the Grand Jury Audio.

95. If McLaughlin or Hill instructed Ruwe to transcribe only specific selections of the Grand Jury Audio, there is no record of such order and Hill continues to maintain that Brewington has had full access to the complete transcripts.

96. The history of Brewington’s criminal trial demonstrates Hill’s ongoing efforts to deny Brewington access to evidence. On July 18, 2011, the State informed Brewington the transcripts from the grand jury were the only means by which Brewington could determine which actions he was required to defend. During a final pretrial hearing September 19, 2011, Hill acknowledged that neither Brewington nor his public defender had a copy of the Grand Jury transcripts. Hill

refused to grant Brewington's request to continue the October 3, 2011 jury trial and marched Brewington to trial without any understanding of the indictments.

97. The best-case scenario in this matter is that Ruwe and Negangard altered the official record of the Grand Jury proceedings to deny Brewington the ability to build a defense. The worst-case scenario is that over the past four years the officials mentioned above have been actively obstructing public access to the Grand Jury Audio in an effort to cover up an unconstitutional trial.

98. To date, Brewington has not received even an edited version of the Grand Jury Audio.

RELIEF REQUESTED

99. Brewington seeks disclosure of an unedited copy of the Official Audio Record from the Grand Jury proceedings relating to Cause No. 15D02-1103-FD-00084.

100. The audio sought in the preceding paragraph is a public record subject to release per the Office of the Public Access Counselor.

101. If Hill would like the opportunity to call witnesses or present evidence of additional grand jury proceedings that may, or may not, be intertwined with Brewington's proceedings, Brewington requests this Court to set a hearing. A hearing will also give Brewington the ability to call Ruwe to testify to who secretly authorized the partial transcription of the Grand Jury proceeding.

102. Brewington requests all fees and expenses associated with bringing this action.

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; and (4) award Brewington any other appropriate relief.

July 14, 2016

Respectfully submitted,



Daniel P. Brewington

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Exhibit A



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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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', written in a cursive style.

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.

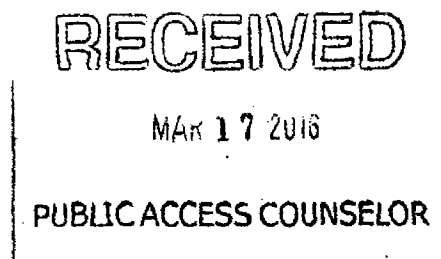
This case has progressed beyond the issuing of indictments by the grand jury and has had verdicts returned at a trial by jury over which the Special Judge presided. The Defendant appealed this matter to the Indiana Court of Appeals and the Indiana Supreme Court which have issued published opinions. The 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



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

NOTICE

This information contained in this facsimile message is legally privileged and confidential and intended only for the use of the individual or entity to whom it is addressed. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the address below via U.S. Postal Service. Thank you for your cooperation.

Questions or problems in transmission, contact Sender: RUSH SUPERIOR 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,

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

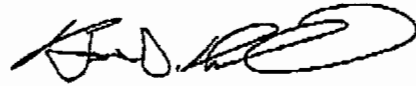
Ms. Brewer,

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 those 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. Hill", with a large, stylized flourish at the end.

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

Exhibit B

Dan Brewington

From: Hoss, Kian (OPAC) <KiaHoss@opac.in.gov>
Sent: Friday, May 06, 2016 1:13 PM
To: contactdanbrewington@gmail.com
Subject: Your Formal Complaint dated April 27

Dear Mr. Brewington:

This email is to acknowledge the receipt of your formal complaint against the Dearborn County Superior Court.

We are unable to accept your complaint because an opinion on this matter has already been addressed. You contend that Judge Brian Hill violated the APRA by refusing to release records to you, despite a recommendation from the Counselor. You also contend that the Court is making false statements to deny you access.

This office is not a finder of fact and cannot determine whether the statements made by the court, specifically those stating that other testimonies appear on the record, are true. This office is merely administrative in nature and cannot compel Judge Hill to prove his statements. Because we cannot determine whether these statements are accurate, we cannot determine whether the court's actions violated the APRA.

Even assuming these statements are true; this office is not considered law enforcement nor is it part of the judiciary. The sole authority this office has is to opine on complaints presented. This office has previously opined on this issue and does not have the authority to compel the production of records. If you still wish to obtain a copy of the records, your next step would be to file a complaint against Judge Hill in a court of law. This Office has no further authority to deal with this matter.

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

Kian Hoss
Legal Intern
Office of the Public Access Counselor

Exhibit C

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 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.

A



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 and [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]

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 D

STATE OF INDIANA
COUNTY OF DEARBORN

DEARBORN SUPERIOR COURT II
CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,
Plaintiff

vs

DANIEL BREWINGTON,
Defendant

FILED

FEB 02 2012

F. Kelly 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.

15D02-1103-FD-00084, 2 Pgs
02/02/2012 Id: 0000233903
AMENDED ORDER RELEASING AUDIO COPIES



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 E

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

R. M. [Signature]
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 F

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

R. M. [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

Exhibit G

Brian D. Hill, Judge
Rush Superior Court
101 East Second Street, Courthouse
Rushville, Indiana 46173
Phone: (765) 932-2829 / (765) 932-3520
Fax: (765) 932-2856

Sandra A. Land, Court Administrator

Tonya Muckerheide, Court Reporter

May 6, 2016

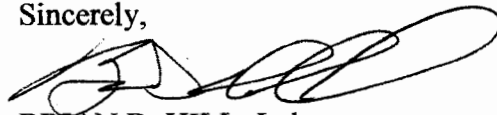
Daniel Brewington
2529 Sheridan Drive
Norwood, Ohio 45212

RE: Response to Amended Request for all Audio from Grand Jury

Dear Mr. Brewington:

I have just received your Amended Request for all Audio from Grand Jury. Pursuant to the Court's Order following the opinion of the Public Access Counselor, you are entitled to receive all audio recordings regarding your proceedings. You are not, however, entitled to receive any audio recordings from other Grand Jury proceedings that may have been conducted on those same days with the same Grand Jurors.

Sincerely,



BRIAN D. HILL, Judge
Rush Superior Court

BDH:sl

cc: Dearborn Superior Court II
215 W High Street
Lawrenceburg, IN 47025