

October 18, 2004

Mr. Fred Peters, #26498  
Wabash Valley Correctional Facility  
P.O. Box 111  
Carlisle, IN 47838

*Re: Formal Complaint 04-FC-172; Alleged Violation of the Access to Public Records Act by the Marion County Court-Criminal Felony Court #3*

Dear Mr. Peters:

This is in response to your formal complaint alleging that the Marion County Court, Criminal Felony Court #3 ("Court") violated the Access to Public Records Act ("APRA") by denying you access to public records. For the following reasons, I find that the Marion County Court-Criminal Felony Court #3 violated the Access to Public Records Act.

#### BACKGROUND

According to your complaint and the attachments you provided, on August 2nd you requested a certified copy of your Judgment of Conviction and Sentence, a certified copy of your Abstract of Judgment, and sample copies of the Court's new Abstract of Judgment and Judgment of Conviction forms. The Court responded on August 17<sup>th</sup> by returning your original request with the words "Denied" and "Nothing Pending" stamped on it. You then filed a formal complaint, which was received by this office on September 17, 2004. I forwarded a copy of your complaint to the Court. Ms. Chari E. Burke, Deputy Clerk of Court Administration, responded. I have enclosed a copy of her response for your reference.

Ms. Burke advises this office that your request was received on August 11<sup>th</sup> and that at that time, it was passed on to the commissioner of Court 3, Theodore Robinette, to respond. The Court responded as stated above. Ms. Burke has advised that as a result of your complaint, the records requested were sent to you on September 28, 2004.

#### ANALYSIS

The Marion County Court is a public agency for purposes of the Access to Public Records Act. Ind. Code §5-14-3-2. Any person may inspect and copy the Court's public

records, unless those records are confidential or otherwise nondisclosable under IC 5-14-3-4. IC 5-14-3-3(a).

The APRA outlines the standard for communicating the denial of access to a public record. Under the APRA, a public agency denying a record following a written public records request must put that denial in writing and include the following information: (1) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (2) the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

The response that you received from the Court consists of your original written request with the words "Denied" and "Nothing Pending" stamped on it. Also written on that response is a date, "8/17/04," and what appear to be initials. Although the Court's response appears to be timely, the response contains no information indicating the specific exemption authorizing the withholding of the record, or listing the name and title or position of the person responsible for the denial. Because the APRA requires this information pursuant to IC 5-14-3-9(c), failure to provide this information in response to your request was a violation of the Access to Public Records Act.

#### CONCLUSION

For the foregoing reasons, I find that the Marion County Court, Criminal Felony Court #3 violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Chari Burke