

December 29, 2004

Mr. Micah D. Perryman
Wabash Valley Correctional Facility L-424u
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 04-FC-223; Alleged Violation of the Access to Public Records Act by the Elkhart County Superior Court 2

Dear Mr. Perryman:

This is in response to your formal complaint alleging that the Elkhart County Superior Court 2 violated the Access to Public Records Act by denying you a record. I find that the Elkhart County Superior Court 2 did not violate the Access to Public Records Act, because it did not receive your request for records.

BACKGROUND

You claim that you sent a request to Elkhart County Superior Court 2 for a copy of the probable cause affidavit filed with Superior Court 2 on May 5, 2003, and search warrant issued by Superior Court 2 on May 5, 2003. You have stated that you mailed the request on November 1, 2004, and had not received any response by the time you filed your formal complaint with this office on November 29, 2004.

I sent a copy of your complaint to the Elkhart County Superior Court. Ms. Stephanie Burgess spoke with me by telephone. She stated that after a thorough search of the files, she was unable to find any such request for records. She also advised that although the warrant issued from Superior Court 2, the case was heard in Superior Court 3 in Goshen, Indiana. It is likely that the information you are seeking is maintained by Superior Court 3.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless the record is excepted from disclosure under IC 5-14-3-

4. IC 5-14-3-3(a). An agency is required to respond to a request for records within certain timeframes, depending upon the mode of transmission of the request. When an agency receives a request by U.S. Mail, the agency must acknowledge the request in writing and state what efforts it is making to produce the records or more fully respond, within seven (7) calendar days from the date it receives the request. The failure of an agency to respond within the timeframes set out in the Access to Public Records Act is deemed a denial of the record.

However, the Elkhart Superior Court has stated that after diligent search, it does not have a record of ever having received your request. Although you include a copy of your request, it does not show the address to which you sent the original request, nor have you demonstrated having placed the request in the mail with adequate postage. Therefore, I do not find any violation of the Access to Public Records Act by Elkhart Superior Court 2 for failing to respond to a request for records that it did not receive. Moreover, Ms. Burgess suggested that you send your request for records to Superior Court 3 in Goshen, Indiana, as Superior Court 2 does not maintain the records you seek.

CONCLUSION

For the foregoing reasons, I find that the Elkhart County Superior Court 2 did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Stephanie Burgess