

February 1, 2005

Sent Via Facsimile

John T. Lewis
P.O. Box 104
5664 N. White River Road
Campbellsburg, IN 47108

Re: Formal Complaint 05-FC-1; Alleged Violation of the Access to Public Records Act by the Clerk of the Washington Circuit Court

Dear Mr. Lewis:

This is in response to your formal complaint alleging that the Washington Circuit Court Clerk ("Clerk") violated the Access to Public Records Act by failing to respond to your request for records.

BACKGROUND

You allege that you sent a request for records to Clerk Rita Martin of the Washington Circuit Court by letter dated December 7, 2004. You provided me with a copy of the December 7 letter, in which you stated: "Release to me, by authority of IC 5-14-3-1 through IC 5-14-3-3, in writing, whether or not you have drawn interest on my \$200.00 cash since receiving it and the amount thereof. By law you have seven days from receipt of this request to respond and comply." This request was in relation to a dispute between you and the Clerk regarding why the \$200 bond that was released to you was not accompanied by accrued interest.

You allege in your complaint that you have never received the above information. You filed your formal complaint with this office on January 3, 2005. I forwarded a copy of your complaint to Clerk Martin, and received a written response which I enclose for your reference. In her response, Ms. Martin stated that with respect to your request for information regarding the interest on the bond money, she had intended to respond by December 13, 2004. However, the county attorney Mr. Allen had informed her that he had made arrangements with you to receive your \$200 bond release in cash, and Ms. Martin believed that the issue was resolved and there was no need to supply you with the information that you sought. She also informed me that the bond money was not placed in an interest bearing account and that you were informed of this fact in October 2004 when this dispute actually began.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours. Ind.Code 5-14-3-3(a). Under the Access to Public Records Act, a public agency is required to respond to a request for records within a certain period of time. For written requests, the public agency is required to issue a response within seven (7) calendar days. IC 5-14-3-9(b). Failure to respond is deemed to be a denial of the record. If the public agency intends to deny a record, the denial must be in writing and include a statement of the specific exemption or exemptions that apply to the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). A response may be acknowledgment that the agency received the request and a statement regarding whether the public agency has responsive records.

Based on Ms. Martin's response, it appears that your request for records grew out of a dispute regarding whether you were entitled to interest on the cash bond that was deposited on your behalf with the Clerk. Your request for "whether or not you [the Clerk] have drawn interest on my \$200 cash since receiving it and the amount thereof..." is more in the nature of a request for information than a request for records. Under the APRA, an agency is not required to create a record in order to fulfill a request for a record. If the Clerk does not maintain a record that documents whether or not the cash bond accrued interest, the Clerk was not required to create a record to respond to your request for information. On the other hand, the Clerk was required to inform you whether a record exists, and to do so within seven days. Ms. Martin indicated that she was aware of her response time, but believed that the matter had been resolved. She also stated that she informed you in October that the cash bond was not placed in an interest bearing account. Under these circumstances, I cannot determine that the Clerk violated the Access to Public Records Act in her failure to issue a response to your request within seven days. However, I advise a public agency that it is wise to issue a letter to a requester stating the understanding with respect to the status of a request for records so that there is no misunderstanding about whether a response is still expected.

In any case, the Clerk's response to your complaint has fulfilled your original request for information regarding whether the Clerk drew interest on your cash bond.

CONCLUSION

For the foregoing reasons, I find that the Clerk of the Washington Circuit Court did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Rita Martin