

June 24, 2005

Herbert Foust
DOC # 124101
Putnamville Correctional Center
1946 W. US Hwy 40
Greencastle, IN 46135

Re: Consolidated Formal Complaint 05-FC-105 and 05-FC-111; Alleged Violations of the Access to Public Records Act by the Clerk of the Vanderburgh Circuit and Superior Courts.

Dear Mr. Foust:

This is in response to your formal complaints alleging that the Clerk of the Vanderburgh Circuit and Superior Courts (“Clerk”) violated the Access to Public Records Act (“APRA”) by failing to timely respond to your request for records and denying your request for records. I find that the Clerk of the Vanderburgh Circuit and Superior Courts violated the Access to Public Records Act.

BACKGROUND

On May 25, 2005 you filed a formal complaint with the Office of the Public Access Counselor alleging that the Clerk had violated the APRA by failing to respond to your request for public records. Your complaint was assigned formal complaint # 05-FC-105. You state that you mailed a request for public records to the clerk on May 1, 2005. You allege that as of May 23, 2005 you had not received a response.

On June 6, 2005 you filed a formal complaint with the Office of the Public Access Counselor alleging that the Clerk had violated the APRA by denying your request for public records. Your complaint was assigned formal complaint # 05-FC-105. You state that you mailed a request for public records to the clerk on May 20, 2005. The Clerk responded to that request on May 26, 2005. She stated that you must provide additional identifying information in order to receive the requested records.

I have consolidated formal complaints 05-FC-105 and 05-FC-111 for the following reasons: the complaints are filed against the same agency and concern requests for the same information. The information requested in both the May 1st and May 20th letters was the Chronological Case Summary (or summaries) for all cases filed in the Vanderburgh Superior or Circuit Courts entitled “State of Indiana vs. Jonathon Eanes” that had been filed as a criminal action from January 1, 2003 (2002 in the first request) to the present.

The Clerk, Susan K. Kirk, responded to formal complaints 05-FC-105 and 05-FC-111 by letter dated June 10, 2005. A copy of Ms. Kirk’s letter is enclosed for your reference. Her response is as follows:

“This letter is in response to the two(2) complaints filed by Mr. Foust. It is our policy not to do criminal background searches or criminal record checks. We will provide information only if the cause number, date and type of offense, and/or personal identifiers are provided. We did respond immediately to both of Mr. Foust’s requests with our form letter explaining what was needed to obtain information. In addition, it has always been our policy not to furnish one inmate with another inmate’s criminal history. Please advise.”

ANALYSIS

Timeliness of Responses

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven days in which to respond. IC 5-14-3-9(b). If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The Clerk is a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours. IC 5-14-3-3(a).

Under the APRA the Clerk is required to respond to your request for records within seven (7) days of receipt of your request. The Clerk stated that she responded immediately to both of your requests. She did not however, provide the dates upon which those responses were made. In your complaint 05-FC-111 you provided a copy of the Clerk’s response that is dated May 26, 2005. That response was dated within six (6) days of your request and therefore did not violate the APRA.

Regarding complaint 05-FC-111, while the Clerk maintains that she responded “immediately” she provided no indication as to whether she responded within seven (7) days of receipt of your request. You stated that as of twenty-two (22) days after the filing of your request that you had not received a response. If the Clerk did not respond within seven (7) days of receipt of your request, the Clerk violated the APRA.

Denial of Request

A written record request is entitled to a written response, and if a public agency denies a record request it is expressly required by the statute to set forth the specific statutory exemption authorizing its nondisclosure. IC 5-14-3-9(c)(2)(A).

The Clerk's May 26, 2005 letter, which you enclosed with your June 6th complaint, improperly denied your request for records. This office has held that agencies should request clarification in order to identify responsive records. A request for inspection and copying must identify with reasonable particularity the record being requested. I.C. 5-14-3-3(a). "That (an agency) can identify and has many records that are responsive does not make the request so vague or broad that it relieves the agency of its obligation to provide access to those records." *Opinions of the Public Access Counselor 04-FC-73, 04-FC-75, and 04-FC-80*. "(I)f an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request." *Opinion of the Public Access Counselor 02-FC-13*.

However, the request for clarification may not be done in such a way as to effectively deny disclosure of the records. This office has held that requiring information that may only be known to the individual who is the subject of the records may constitute a denial of public records. *Consolidated Opinion of the Public Access Counselor 05-FC-72, 73,74,76 and78*.

The Clerk's letter to you indicated that you must provide the "[n]ame of offender and exact date and type of offense, date of birth and social security number of offender (criminal cases)." In instances where, according to statute, the information sought may only be made available to the subject of the records then it would be appropriate to require information such as the date of birth and social security number. The Clerk has not provided any indication that the information sought is, by statute, only available to the person who is the subject of the record.

It would also be appropriate to require such information if, due to the manner in which the information is catalogued, the only way it could be accessed is through a search by the exact date and type of offense, date of birth and social security number. *See Opinion of the Public Access Counselor 03-FC-69, (September 9, 2003) page 4-5 (Where agency could only retrieve information by name and date it was appropriate to require requestor to provide such information.)*. The Clerk has not indicated that the information you seek could not be retrieved by the parameters indicated by you, which included a date and the name of cases sought by you.

Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request. *See IC 5-14-3-1*. However, the agency cannot in effect deny you the records by requiring such particularity that you could not possibly provide it. If more than one document, or set of documents, would satisfy the request and the agency cannot determine which is responsive

it may provide you with the option to either provide further identifying information to narrow the field, or to obtain copies of all of the documents.¹

The Clerk is correct that the APRA does not require a public agency to perform research in order to satisfy a request for public records. The Clerk is not required to conduct research on your behalf. However, if your request identifies with reasonable particularity any public records that are maintained by the Clerk, the Clerk is obligated to produce those records. The APRA requires the requestor to identify the records with reasonable particularity; it does not require the requestor to specifically identify by exact title or cause number the documents sought. The reason for this is obvious -- agencies are in a better position to know the documents within their possession than a member of the public is. If the requestor can do a credible job of describing the document, the agency may not turn him away based merely on form. The Clerk has not shown that your request is not reasonably particular to identify the records you seek.

The Clerk also stated, “[i]t is our policy not to do criminal background searches or criminal record checks.” Additionally, the Clerk stated that, “it has always been our policy not to furnish one inmate with another inmate’s criminal history.” Under IC 5-14-3-4(a)(2) an agency may maintain as confidential “[t]hose records declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” The Clerk has cited to no rule or statutory authority that allows her to institute such a policy. Additionally, access to court records is governed by Ind. Administrative Rule 9. My office could find no support for the Clerk’s policies in Admin.R. 9. The Clerk may not institute a policy that would deny access to public records, without specific statutory authority to do so.

CONCLUSION

For the foregoing reasons, I find that if the Clerk of the Vanderburgh Circuit and Superior Courts failed to respond to your May 1, 2005 request for records within seven (7) days of receipt of the request, she violated the Access to Public Records Act. Additionally, the Clerk’s denial of your request did not conform to the requirements of the Access to Public Records Act in that it failed to cite specific statutory authority for the denial of your request. The Clerk may not require you to provide information that is not available to the general public in order to identify a requested document. Finally, the Clerk may not institute policies that would deny access to public records without specific statutory authority to do so.

Sincerely,

Karen Davis
Public Access Counselor

cc: Susan K. Kirk

¹ In many instances agencies have provided requestors with a computer print-out listing all records that may be responsive to the request in order to help the requestor to determine which records would fulfill the request. This practice is highly encouraged.