

June 24, 2005

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

Re: Formal Complaint 05-FC-107; Alleged Violation of the Access to Public Records Act by the Allen County Clerk's Office.

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Allen County Clerk's Office ("Clerk") violated the Access to Public Records Act ("APRA") by failing to respond to your request for public records within seven (7) days. I find that the Allen County Clerk did not violate the Access to Public Records Act.

BACKGROUND

On May 25, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-107. Your complaint alleges that on May 1, 2005 you sent a request for public records to the Clerk. As of May 23, 2005 you had not received a response.

The Clerk responded to your complaint by letter dated June 6, 2005. She stated that she did not receive a request for records from you until May 26, 2005, the day following her receipt of your complaint. She provided a copy of the request and the envelope in which it was received. The envelope was postmarked May 24, 2005, the same date as the postmark on your complaint. She responded to that request on May 27, 2005. Her response indicated that there were many documents that would be responsive to your request. She included a printout of the possibly responsive documents and requested that you clarify which documents you would like to receive copies of.

ANALYSIS

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). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The public agency's duty to respond is not prompted until receipt of the request for public records. Since your complaint is dated the same day as the request it is apparent that you did not allow the agency seven (7) days to respond prior to filing your complaint. The Clerk did respond with seven days following the receipt of the request.

The Clerk's response, provided after receipt of your request, was appropriate. When a public records request is made, the requestor must make his or her request with reasonable particularity. IC 5-14-3-3(a)(1). There is no Indiana case law defining "reasonable particularity," so were it necessary to interpret the APRA to determine what the General Assembly intended this phrase to mean, courts would rely upon the common and ordinary, dictionary meanings of the word used. *Crowley v. Crowley*, 588 N.E.2d 576, 578 (Ind. Ct. App. 1992). "Particularity" is defined as "the state of being particular rather than general." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (1981), 956. Rules of statutory interpretation also require that one construe the phrase "reasonable particularity" in light of the entire APRA. *Deaton v. City of Greenwood*, 582 N.E.2d 882, 885 (Ind. App. 1991).

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 generally*, IC § 5-14-3-1. The Clerk did exactly that. In addition, she properly provided you with information that would help you to clarify the request.

CONCLUSION

For the foregoing reasons, I find that the Allen County Clerk's Office did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Therese M. Brown