

July 27, 2005

Sonny K. Henry
D.O.C. #935520
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838-2222

Re: Formal Complaint 05-FC-128; Alleged Violation of the Access to Public Records Act by the Lake County Superior Court Clerk.

Dear Mr. Henry:

This is in response to your formal complaint alleging that the Lake County Superior Court Clerk ("Clerk") violated the Access to Public Records Act ("APRA") by failing to provide all of the documents requested by you.

BACKGROUND

Your complaint, filed on June 28, 2005, was assigned formal complaint # 05-FC-128. Your complaint alleged that you sent a request for access to public records to the Clerk on or about June 8, 2005. Your request was for copies of "any and all offense reports, supplemental reports, written or recorded statements, and or depositions, (911) radio and or phone dispatch from Hammond Police Department from Oct. 1, 1996, and any and all other documents, photographs and or photocopies of latent prints taken from the scene, pertinent to Lake County Cause 45G03-9612-CF-00231 Sonny K. Henry v. State of Indiana." On June 24, 2005 you received two documents from the Clerk. You state that there must be more documents, as you believe that there should be "documents such as statements, reports, supplemental reports, photographs and more."

The Clerk responded to your complaint by letter dated July 5, 2005. A copy of the Clerk's response is enclosed for your reference. The Clerk's office stated that it has sent to you all of the documents in its possession. Additionally, my office spoke with the Clerk's office on July 27, 2005 to confirm whether the Clerk communicated to you that the Clerk did not maintain any additional responsive documents. The Clerk's office explained that they usually tell requestors that they do not have any other responsive records; however, they could not

specifically confirm whether that was done in this instance. The Clerk's office did forward two additional records noting the actions taken in response to your request. Those documents are also enclosed.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. IC 5-14-3-3(a). However, a public agency is not required to disclose a record that it does not maintain and is not required to maintain. If the public agency has received a request for a record, and the agency does not maintain the record, it should so state in its response to the request.

The Clerk has no duty to provide you with documents that the Clerk does not maintain. The Clerk does have a duty to inform you of whether it does not have the records you seek. If the Clerk informed you that it does not maintain the records you seek, then the Clerk did not violate the APRA.

You fail to state on what basis you believe the Clerk must maintain the other documents that you believe it should have. Among other things, you have requested records of the Hammond Police Department. The Clerk's office has indicated that it does not maintain these records. I would suggest that your request for those records should be directed to the Hammond Police Department. If you still believe that the Clerk is not being forthcoming with the records, your remedy is to file a lawsuit under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Lake County Superior Court Clerk did not violate the Access to Public Records Act when it did not provide you with documents that it does not maintain. Additionally, if the Clerk notified you that it does not maintain the documents that you seek, then it did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Sylvia C. Brown