

August 11, 2005

Jimmy Isom
#890515
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 05-FC-137; Alleged Violation of the Access to Public Records Act by the Clerk of the White County Superior Court

Dear Mr. Isom:

This is in response to your formal complaint alleging that the Clerk of the White County Superior Court (“Clerk”) violated the Access to Public Records Act by failing to send you the hearing transcript that you requested. I find that you did not request your transcript under the Access to Public Records Act; therefore, the Clerk did not violate the Access to Public Records Act.

BACKGROUND

You stated that on April 27, 2005 you filed a motion for trial and guilty plea and sentencing hearing transcripts for cause no. 91D01-0303-FA-39. When you did not receive the transcripts, you renewed your motion by affidavit on June 6, 2005. You claim that you have not received the records or a reply.

I sent a copy of the complaint that you filed with my office on July 13, 2005 to the White County Clerk. Judge Robert B. Mrzlack, Judge of the White Superior Court, wrote a letter in response, a copy of which I enclose for your reference. Judge Mrzlack told me that you had filed a *pro se* petition for post-conviction relief, as well as a *pro se* motion for trial and guilty plea and sentencing transcript. Two days later, Judge Mrzlack directed the Clerk to forward a copy of your petitions to the Indiana Public Defender’s office and directed the court reporter to prepare a transcript. On June 1 the public defender entered an appearance on your behalf. The transcripts are being prepared, and no other additional motions have been filed on your behalf.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). There are no formal procedures for requesting a record under the APRA, except that a public agency may require that a request be submitted on a form supplied by the agency. IC 5-14-3-3(a). The APRA stands as an independent means by which an individual may request and receive records, even if the requester is a litigant. In fact, a person requesting a record is not required to affirmatively state that he is proceeding under the APRA or public records laws, if the request is otherwise without formal language. However, if the request for records adopts the formal requirements of the Indiana Rules of Court after the requester files a formal petition, it is not fair for the requester to require the agency to comply with the APRA when a different set of rules is invoked for the record request. Hence, the requester cannot complain that the agency failed to comply with the Access to Public Records Act in those circumstances.

There are different rules that apply to requests for records under the APRA and those that apply to post conviction relief petitions. Ind. Post-Conviction Rule 1(4)(d). For example, the APRA requires that a request for records be replied to within seven days if sent by mail. There are no similar requirements under the Ind. Post Conviction Rules. Therefore, the Clerk has not violated the APRA because it was not required to follow the APRA when it accepted for filing your *pro se* petition for post conviction relief and motion for transcripts.

CONCLUSION

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

Sincerely,

Karen Davis
Public Access Counselor

cc: Honorable Robert B. Mrzlack