



STATE OF INDIANA

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January 6, 2006

Tyrone Frazier
DOC # 910476
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 05-FC-249; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Marion Superior Court ("Court") violated the Access to Public Records Act ("APRA") by failing to respond to your request for access to public records.

BACKGROUND

On December 9, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-249. You stated that you filed a request for public records with the Marion County Superior Court on November 20, 2005. Specifically, you requested a copy of a search warrant in Cause No. 49G05-0212-FB-294197. You indicated that as of December 6, 2005 you had not received any response from the Court.

The Honorable Grant W. Hawkins responded to your formal complaint by letter dated December 13, 2005. A copy of that letter is enclosed for your reference. Judge Hawkins indicated that the courts are not the repositories of search warrants and search warrant returns; rather, the county clerk maintains those records. Additionally, he stated that if the warrant had been introduced as an exhibit in your trial then it would be a part of the record which has been made as part of your appeal. He indicated that if the Court has a copy of the search warrant it is in a form available to you and your attorney. He asserted that if a search warrant was used in your case that it would have been provided to your attorney as part of the routine pre-trial discovery process. Finally, Judge Hawkins indicated that you should request the records from the Marion County Clerk ("Clerk").

My staff attorney spoke with Judge Hawkins via telephone to confirm whether the Court had received your request. Judge Hawkins indicated that he has received numerous requests from you but does not know if he received this particular request or whether the Court responded to the request if it was received.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. Furthermore, “[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” IC 5-14-3-1.

The Marion County Superior Court is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(1)(2). Accordingly, any person has the right to inspect and copy the public records of the Court during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. IC 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. IC 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. IC 5-14-3-9(e).

The Court could not confirm whether it received the particular request that you complained of. The Court, therefore, did not confirm whether the Court responded to the request. If the Court received your request and failed to respond within the seven (7) day period after receiving the request it violated the Access to Public Records Act.

It is also important to note, however, that your request was directed to the wrong public agency. If you wish to obtain access to court records maintained by the Clerk, you should direct future requests to the Marion County Clerk's Office. *See Opinion of the Public Access Counselor 02-FC-56.*

CONCLUSION

For the foregoing reasons, I find that if the Marion County Superior Court received your request for public records and failed to respond within seven (7) days, it violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: The Honorable Grant W. Hawkins