



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

## PUBLIC ACCESS COUNSELOR

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January 13, 2006

Anthony Curtis Smith  
DOC # 913648  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361

*Re: Formal Complaint 05-FC-255; Alleged Violation of the Access to Public Records Act by the Lake County Clerk*

Dear Mr. Smith:

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

### BACKGROUND

On December 15, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint number 05-FC-255.

You stated that you requested the following records: warrant of extradition; waiver of extradition; any other warrant issued; entry of judgment; judge pro tem, magistrate, or judge recommendation; grand jury proceedings; probable cause warrant; copy of preliminary hearing proceedings. You state that you received some of the requested information including the probable cause affidavit; information; amended information; abstract of judgment; and criminal docket. However, you believe that your request was denied because some of the information that you requested was not provided.

Chief Deputy Clerk Sylvia Brown responded to your formal complaint on behalf of the Clerk by letter dated December 19, 2006. A copy of that letter is enclosed for your reference. She stated that your request was received by the Clerk on November 30, 2005. The Clerk mailed copies of records found in your file to you on December 2, 2005. My staff attorney spoke with Ms. Brown via telephone on January 13, 2006. Ms. Brown indicated that the Clerk provided you with those records responsive to your request that are maintained by the Clerk. She indicated that the Clerk does not maintain the remainder of the records requested by you. She could not confirm whether you were informed that the Clerk does not maintain those records.

## 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 Access to Public Records Act provides that any person may inspect and copy the public records of any public agency, except as provided in the exceptions listed in section 4 of the APRA. IC 5-14-3-3(a). The burden lies with the public agency to show that a public record is not disclosable, and if access is denied to put into writing the statutory basis for that denial. *See*, IC 5-14-3-1 and 5-14-3-9(c). 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 responded to your request within seven days of receipt by providing you with some of the records you requested. However, the Clerk does not maintain all of the records that you requested. If the Clerk does not maintain some of the records you seek, it was not a violation of the APRA if the Clerk did not provide you with those records. However, the Clerk should have informed you that it did not maintain records responsive to the remainder of your request.

## CONCLUSION

For the foregoing reasons, I find that the Lake County Clerk did not violate the Access to Public Records Act when the Clerk did not provide you with records that the Clerk does not maintain; however, the Clerk should have notified you that it does not maintain those records.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Sylvia Brown