

January 19, 2006

Stuart Showalter
P.O. Box 374
Lebanon, IN 46052

Re: Formal Complaint 05-FC-261; Alleged Violation of the Access to Public Records Act by the Boone County Superior Court II

Dear Mr. Showalter:

This is in response to your formal complaint alleging that the Boone County Superior Court II ("Court") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records. I find that the Court violated the APRA when it did not timely respond to your request.

BACKGROUND

On December 2 you mailed a request for records to Boone County Circuit Court, and Boone County Superior Courts I and II. You requested "Any schedule in any format showing the days court was in session during the period 24 October 2005 through 02 December 2005," and "any notes, memoranda, official document or other material, in any format, stating a reason why court was not in session on any weekday during the period 24 October 2005 through 02 December 2005, save the Memorandum from the Governor concerning holidays, which is in my possession." Your request did not reference any particular case.

You indicated in your formal complaint to the Public Access Counselor that the Boone Circuit Court and Superior Court I had responded to your requests, but Superior Court II did not. I sent a copy of your formal complaint to Judge James Detamore, now retired. He responded by letter dated December 21, 2005. He enclosed the court calendar for the dates October 24 to December 2, and told me that he had sent you this same document. Judge Detamore explained that initially, the request was filed with the Clerk's office. The Clerk forwarded your request to the Court. The Court staff researched the court records and noted that the only case pending in

Judge Detamore's court involving you was a protective order cause in which you were respondent.

The court staff believed your request was related to that case. In the protective order matter, Judge Detamore had recused himself; therefore, he never saw your request. It was not until December 15, 2005 that Judge Kincaid assumed jurisdiction of the protective order matter. Judge Detamore had never seen your request prior to receiving my correspondence regarding your complaint. In his complaint response, Judge Detamore provided information about his absences from court for vacation and personal business during the period in question, but indicated that court was in session during those absences.

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. Ind. Code 5-14-3-3(a). A request for a record must identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). If a public agency receives a request for records via U.S. Mail, the APRA requires that the agency issue a response within seven (7) calendar days, or the request is deemed denied. IC 5-14-3-9(b).

You made a straightforward request for documentation of the court's days in session during the period of October 24 through December 2, and any document stating a reason why court was not in session on any day during that period. If the court maintained such a record, it was required to disclose it or state why the record was exempt. It would not be necessary for the court to create a record to supply the answer to your question or request for documentation. The court ultimately determined that a printout of its calendar during this period was responsive to your request. The Court was required to at least respond to your request for records within seven days of its receipt of your request, even if the Court needed more time to determine whether it had responsive records. Because the Court did not issue a response within seven days, it violated the Access to Public Records Act.

The Indiana Supreme Court has adopted Administrative Rule 9 concerning access to court records. The general rule is that all persons have access to court records, except for limited exceptions. Court records consist of "case records" and "administrative records." Ind. Administrative Rule 9(C)(1). "Administrative records" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government and not associated with any particular case. Admin. R. 9(C)(3). My reading of this provision leads me to think that you had asked for administrative records, not case records. It is puzzling that Court staff believed from your generic request that your request concerned a particular matter involving you. If the Court was waiting until a new judge was assigned to your case to determine whether these administrative records would be disclosed, this delay would not be warranted under the APRA or under Administrative Rule 9, in my opinion. In any event, as I have stated, the Court should have issued a timely response to your request, indicating how and when the Court intended to fulfill your request for records.

CONCLUSION

For the foregoing reasons, it is my opinion that the Boone County Superior Court II violated the Access to Public Records Act by failing to respond to your request for records within seven days. I note that you have received the Court's calendar in response to your request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Honorable Rebecca McClure
Boone Superior Court II