

May 23, 2005

Herbert Foust  
Putnamville Correctional Facility  
Reg. No. 124101  
1946 W. US Hwy 40  
Greencastle, IN 46135

*Re: Formal Complaint 05-FC-75; Alleged Violation of the Access to Public Records Act by the Putnam Circuit Court*

Dear Mr. Foust:

This is in response to your formal complaint alleging that the Putnam Circuit Court violated the Access to Public Records Act ("APRA") by failing to adequately respond to your request for records, thereby denying your request for records. I find that the Putnam Circuit Court violated the Access to Public Records Act.

#### BACKGROUND

On April 20, 2005 you filed a complaint alleging that the Putnam County Circuit Court ("Court") denied you access to public records. That complaint was received in this office on April 22, 2005 and assigned Formal Complaint # 05-FC-75.

On April 11, 2005 you sent a letter to the Court requesting "A true copy of any chronological case summary for any and all titles or causes of action filed in the Putnam county courts of which are entitled 'State of Indiana vs. Michael Thompson' in the years between and including 2002 thru and including 2005."

You received a handwritten note file stamped by the Clerk of the Putnam Circuit Court on April 18, 2005. The response stated "Dear Mr. Foust, The records in our county (Putnam) show no records for Herbert S. Foust. Thank-You!"

The Court did not respond to this complaint.

## 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.” IC 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.

While the Court did not respond to this complaint, it is appears that an oversight occurred in reviewing your request. I infer this from the fact that your request was for case file material regarding Michael Thompson rather than “Herbert Foust”. However, the agency did not respond to this complaint with any explanation or attempt to remedy the mistake; therefore, this office can not determine the true nature of the response.

It is clear that the Court failed to properly respond to your request by providing you the requested documents, or to provide an appropriate reason for denial. It is my opinion that under the APRA, this failure to correctly respond to your request constituted a denial.

While this does not alter my opinion in this matter, it is important to note that the response appears to have been simple human error. I would encourage you, in the future, to communicate with the agency regarding what appears to be an obvious error and allow the agency the opportunity to remedy its mistake.

## CONCLUSION

For the foregoing reasons, I find that the Putnam County Circuit Court violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Opal J. Sutherlin