

August 10, 2006

Tavarus S. Foreman  
#106705  
P.O. Box 41  
Indiana State Prison  
Michigan City, IN 46361

*Re: Formal Complaint 06-FC-118; Alleged Violation of the Access to Public Records Act by the Boone Circuit Court Clerk*

Dear Mr. Foreman:

This is in response to your formal complaint alleging that the Boone Circuit Court Clerk ("Clerk") violated the Access to Public Records Act by failing to give you a record.

#### BACKGROUND

You allege in your formal complaint that you have received no response to two record requests that you sent to the Clerk. You state that you sent a request on May 23 and June 11, 2006. You were seeking documents concerning the crime scene pictures, the picture of the weapon retrieved at the scene, the run sheet and report made by the EMT Daniel Martin that was presented at the trial and the two questions asked by jurors pertaining to their testimony and observations of the weapon retrieved by officer Mark Tibbs.

I sent a copy of your complaint to the Clerk. In response, the Clerk stated through her counsel Eileen Sims that the Clerk has no record of receiving requests that correspond to the May 23 and June 11 dates. However, the Clerk had received one request post-marked June 19, 2006. The Clerk received it on June 21, 2006. The copy of the request was enclosed. It contains the same information that you describe in your formal complaint. No cause number or other identifying case information is present in the request. The Clerk stated that she had performed a lengthy search and had identified a Circuit Court case concerning you. The Clerk enclosed copies of any and all

documentation in the case file that you identified. I enclose a copy of the Clerk's letter and all material that the Clerk sent to me. The Clerk has not indicated that she had responded to your request prior to having received a copy of your complaint from my office. The Clerk stated that as a result of the lack of case information, the Clerk believes that this request is "too vague to enable an elected official to respond to a request."

#### 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). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). A request for a record must identify the record with reasonable particularity. IC 5-14-3-3(a).

The Clerk is correct that your request did not identify the records with reasonable particularity. It is difficult for a clerk to identify a case record without a cause number or date. The Clerk had to assume that the case concerned you; your request does not state that and it is not unusual for someone to ask for a case file of another person. Therefore, I advise you to be more specific in future record requests.

On the other hand, the Clerk was required to write you a responsive letter and mail it within seven days of her receipt of your request. The responsive letter should have sought more information from you as to the nature of the case for which you sought records. To the extent that the Clerk was willing to search her records without seeking clarification from you, she should have issued a letter acknowledging receipt of your request and stating that she was searching for responsive records. Had the Clerk sent this letter, which is required under IC 5-14-3-9(b), this complaint might have been averted.

#### CONCLUSION

For the foregoing reasons, I find that while your request for records did not identify the records with reasonable particularity, the Boone Circuit Court Clerk failed to timely respond to your request for records. The Clerk sent me responsive records, stating that the records are all the records maintained in the case file. I enclose this material with this advisory opinion.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Eileen Sims