

August 30, 2006

John C. Chupp
#21879
Correctional Industrial Facility
P.O. Box 600
Pendleton, IN 46064

Re: Formal Complaint 06-FC-130; Alleged Violation of the Access to Public Records Act by the Delaware Circuit Court Clerk

Dear Mr. Chupp:

This is in response to your formal complaint alleging that the Delaware Circuit Court Clerk ("Clerk") violated the Access to Public Records Act by failing to respond to your request. I find that the Clerk did not violate the Access to Public Records Act.

BACKGROUND

You allege in your formal complaint that the Clerk's Office did not contact you after you requested a copy of the disposition of David Wayne Kings case, dealing with his arrest for resisting law enforcement, DWI, and various other charges. You gave the date of his arrest and his date of birth.

In response to your complaint, Ms. Karen Wenger, Clerk of the Delaware Circuit Court, informed me that her office had never received any request from you dated July 14. Her office has searched for records responsive to your request now that it is aware of your request, and found no responsive records. However, the Clerk located a cause number of a matter in Muncie City Court. The cause number and address of the Muncie City Court is enclosed in the letter from Ms. Wenger, which I have attached for your reference.

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 a 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). If the public agency has not received a request for a record, it cannot respond and would have no obligation under the Access to Public Records Act to respond within the timeframes set out in the Access to Public Records Act.

A public agency is not required to compile or create a record to satisfy a person’s request for information. Rather, the APRA requires that a public agency make available its current records. If the agency does not maintain a requested record, the public agency should affirmatively tell a requester that the public agency does not maintain the records.

The Clerk has averred that her office did not receive the request for records. Therefore, the Clerk did not violate the Access to Public Records Act. However, the Clerk has helpfully provided pertinent information about where and how you could request the record from the agency that maintains it, the Muncie City Court. I advise you to pursue this avenue.

CONCLUSION

For the foregoing reasons, it is my opinion that the Delaware Circuit Court Clerk did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Karen D. Wenger