

November 13, 2006

Micah D. Perryman
#143166
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 06-FC-175; Alleged Violation of the Access to Public Records Act by the Clerk of the Elkhart County Superior Court

Dear Mr. Perryman:

This is in response to your formal complaint alleging that the Clerk of the Elkhart County Superior Court (“Clerk”) violated the Access to Public Records Act by failing to respond to your request for a chronological case summary. I find that the Clerk failed to respond within seven days to your request, in violation of the Access to Public Records Act.

BACKGROUND

You requested a record of the filings made in your cause since May 17, 2006. Your request was mailed on September 7, 2006, but you state the Clerk never responded as of the date of your complaint, October 2, 2006.

I sent a copy of your complaint to the Clerk. Clerk Stephanie Burgess wrote on October 12 to inform me that the Clerk received the request on September 20, 2006. Since the case is under appeal, Judge Biddlecome reviewed the request and directed the Clerk to provide the chronological case summary (“CCS”). This document was sent to you on October 12. Ms. Burgess enclosed a copy of the CCS. I enclose a copy of the Clerk’s letter and the CCS with this advisory opinion.

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 in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(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).

The Clerk received the request on September 20. Therefore, a response acknowledging receipt of the request should have been sent to you by September 27. Even if the response had told you that the Court was reviewing your request, that response would have been sufficient under the APRA, since IC 5-14-3-9(b) does not mandate that the record be produced within seven days, only that the public agency respond within seven days. The Clerk has now provided you with the CCS.

Accordingly, it is my opinion that the Clerk violated the Access to Public Records Act when the Clerk failed to send you a response within seven days, as required by the Access to Public Records Act. While it does not change my finding of noncompliance in this matter, I note that the Clerk has now provided the record.

CONCLUSION

For the foregoing reasons, I find that the Clerk of the Elkhart Superior Court violated the Access to Public Records Act when she failed to respond within seven days of receiving the request for records.

Sincerely,

Karen Davis
Public Access Counselor

cc: Stephanie Burgess