

November 13, 2006

Tyrone Frazier
#910476
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: Formal Complaint 06-FC-178; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion Circuit Court

Dear Mr. Frazier:

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

BACKGROUND

You filed your formal complaint alleging that the Clerk failed to respond to your request for records. You requested priority status for your complaint; however, you did not allege any of the circumstances for which priority status may be granted under 62 Ind. Admin. Code 1-1-3. *See* 62 IAC 1-1-2(b). Therefore, I have issued this advisory opinion within 30 days of receiving it.

Chari Burke, Chief Deputy Clerk of the Marion Circuit Court sent me the enclosed response on behalf of the Clerk. Ms. Burke told me that the Clerk received your September 20 request on September 29; the envelope containing your request was postmarked September 26. Ms. Burke mailed a responsive letter to you on October 3, which was within seven days of the Clerk's receipt of your request. Therefore, Ms. Burke maintains that the Clerk has complied with the Access to Public Records Act.

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 a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial is in writing or by facsimile, and the denial includes the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

The Clerk received your request on September 29. The Clerk issued a response to you in a timely manner, on October 3, 2006, which was within seven days. Therefore, the Clerk did not violate the APRA. In addition, the Clerk’s response was sufficient because it informed you that the Clerk was looking for responsive records and would follow-up by November 10, 2006.

CONCLUSION

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

Sincerely,

Karen Davis
Public Access Counselor

cc: Chari Burke