

December 18, 2006

Eric D. Smith
#112675
Indiana State Prison
Michigan City, IN 46361

Re: Formal Complaint 06-FC-203; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court Clerk

Dear Mr. Smith:

This is in response to your formal complaint alleging that Marion County Superior Court Clerk ("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 allege that you sent a request for records to the Clerk on October 30, 2006. You filed your formal complaint on November 17, 2006, claiming that you have received no response from the Clerk. Your request was for a printout of all persons convicted of arson as a class B felony from the dates of March 1, 1991 to March 1, 2006, who went to a jury trial, and a list of their sentences, for individuals in the Indiana Department of Correction.

I sent a copy of your formal complaint to the Clerk. Ms. Chari Burke, Chief Deputy Clerk, responded by letter, a copy of which is enclosed for your reference. Ms. Burke stated that the Clerk did not receive your request, perhaps because no room number appeared on the request. At any rate, Ms. Burke stated that no record currently exists that lists persons convicted of the offense you specified and that contains all the information you seek. Therefore, the Clerk is under no obligation to create such a record. For future requests, the Clerk has suggested that you include the room number, W122, to help ensure your mail's efficient delivery.

ANALYSIS

You requested priority status for your complaint, but have alleged none of the circumstances for which priority may be granted. *See* 62 IAC 1-1-3. Therefore, I have issued this opinion within 30 days from the date your complaint was filed.

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). An agency is not required to create a record or compile data to fulfill a request for a record. Hence, if the public agency has no responsive records, the public agency should so indicate in a response to the person requesting the record.

As the Clerk did not receive your request, the Clerk could not have responded to it. Therefore, the Clerk did not violate the APRA with respect to the response requirements. In addition, the Clerk is under no obligation to compile the information you requested concerning persons convicted of arson and their sentences. Only if the Clerk already maintains this record would the Clerk be obligated to disclose it to you. The Clerk is required to disclose information from individual case records, but you have asked the Clerk to compile the information from those records for you. The APRA does not obligate the Clerk or any other public agency to compile information from various records into a new record.

CONCLUSION

For the foregoing reasons, I find that the Marion County Superior Court Clerk did not violate the Access to Public Records Act when the Clerk did not provide a response to a request she did not receive. In addition, the Clerk is not required under the Access to Public Records Act to compile information from various case records to create a new record.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chari Burke