

January 18, 2007

Mr. Scott E. Miller
#147898
Indiana State Prison
Michigan City, IN 46361

Re: Formal Complaint 06-FC-218; Alleged Violation of the Access to Public Records Act by the LaGrange County Superior Court Clerk

Dear Mr. Miller:

This is in response to your formal complaint alleging that the LaGrange County Superior Court Clerk ("Clerk") violated the Access to Public Records Act by failing to respond to your request for a record. I find that the Clerk should have written a response explaining that the record you sought was not within the records of the Clerk.

BACKGROUND

You filed a civil complaint, *pro se*, in January 2006. You allege that you have repeatedly asked for the cause number that was assigned to the case, and copies of subpoenas that were issued. The latest such request was sent on November 27, within 30 days of your formal complaint. I sent the Clerk a copy of your complaint. She responded by telephone and by letter, a copy of which is enclosed for your reference.

The Clerk explained that certain irregularities in the case filing and in the subpoenas that you submitted resulted in no entry being made in the Clerk's records regarding service of summons. Also, no entries were made in the Chronological Case Summary (CCS) after you filed the civil complaint. The LaGrange Superior Court ("Court") had advised the Clerk that you were required to submit appropriate summonses in conformance with the Indiana Trial Rules.

The Court has now issued an order in the matter and granted a hearing. You have been notified of this order, and the CCS has now been provided to you.

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. Ind. Code 5-14-3-3(a). A public agency receiving a request for a record by mail is required to issue a response within seven days, or the request is deemed denied. IC 5-14-3-9(b). A public record is one that is "created, received, retained, maintained, or filed by or with" a public agency. IC 5-14-3-2(m). If no record exists, the public agency's response would assert that fact, so that there is no misunderstanding about whether the public agency is denying a record that it maintains, or whether the public agency simply does not have responsive records. For example, in this case, if

no record existed showing that the summonses had been served (since in fact they had not), then the Clerk should have written to say that no responsive records then existed in the Clerk's files. The Clerk may have taken the opportunity to explain why no records existed at the time, but the APRA itself does not require such an explanation.

Accordingly, if the Clerk failed to respond at all to your record request, the Clerk violated the Access to Public Records Act. It appears that the Clerk has now entered the filings in the CCS, including the cause number, and has provided you with the CCS.

CONCLUSION

For the foregoing reasons, I find that the Clerk violated the Access to Public Records Act by failing to respond to your request for records.

Sincerely,

Karen Davis
Public Access Counselor

cc: Beverly Elliott