

February 24, 2006

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

Re: Formal Complaint 06-FC-23; 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 give you copies of order book entries. I find that the Clerk did not violate the Access to Public Records Act.

BACKGROUND

You assert in your latest formal complaint that on January 4, 2006, you requested complete copies of the Clerk's order book entries in cause number 49G05-0212-FB-294197. You stated that you had received the Clerk's file in this matter, but the order book entries were omitted.

I sent a copy of your complaint to the Clerk. Ms. Chari Burke, Deputy Clerk, responded. Her response is enclosed for your reference. She stated that after reviewing the file, the Clerk has no record of any January 4, 2006 request. However, in response to other identical requests, the Clerk has complied by giving you copies of the entire file in the above cause. The file includes order book entries. Therefore, the Clerk has fully complied with your request, and your complaint has no basis. Ms. Burke also provided helpful information regarding master commissioner appointments. This latter information is not relevant to the public access issue, but addresses an assertion in your complaint.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). A public agency that receives a request via U.S. Mail is required to respond within seven (7) days of receipt, or the request is deemed denied. IC 5-14-3-9(b). If a public agency does not receive a request, it cannot respond to it. A public agency is not out of compliance with the APRA if it does not respond to a request it has not received.

A public agency is required to provide at least one (1) copy of a public record. IC 5-14-3-8(e). This office has stated that if the public agency has already provided a record to a person, it is not required to provide additional copies in response to repeated requests.

Ms. Burke provided a copy of the Notice of Compliance in the matter that is the subject of this complaint. The Clerk has complied with the Access to Public Records Act. The Clerk was not required to issue a response to a request it did not receive. In addition, the Clerk has already complied with your request for the Clerk's file in the above cause, which included order book entries.

CONCLUSION

For the foregoing reasons, the Clerk of the Marion Circuit Court has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Chari Burke