

February 27, 2006

Roger Holbrook  
#142554  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361

*Re: Formal Complaint 06-FC-29; Alleged Violation of the Access to Public Records Act by the Clerk of the Dearborn Circuit Court*

Dear Mr. Holbrook:

This is in response to your formal complaint alleging that the Clerk of the Dearborn Circuit Court (“Clerk”) violated the Access to Public Records Act (“APRA”) 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 two identical complaints with the Office of the Public Access Counselor on January 24, 2006. The complaint forms were dated January 24, 2006. You alleged in your complaint that you mailed a request for records to the Clerk on December 27, 2005, as “demonstrated on the attached form.” However, the form Request for Records shows a date of January 24, 2006. You claim that the Clerk never responded to your request for records regarding your court case.

I sent a copy of the formal complaints to the Clerk. Clerk Phillip Weaver responded by letter, a copy of which is attached for your reference. Mr. Weaver denied having received either request, but pointed out that even had his office received a request for records sent January 24, the Clerk would not have had the opportunity to issue a response when the complaint was filed. In addition, Mr. Weaver responded in substance to your request. Several records, including those detailing expenses of your case, are not maintained by the Clerk.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request for records by mail is required to respond within seven (7) days of receipt, or the request is deemed denied. IC 5-14-3-9(b). A public agency is not in violation of the APRA if the public agency has not responded to a request that it has not received.

From the information provided by the Clerk, and the documentation that you sent me, it appears that you did not send your request to the Clerk in late December. Rather, you sent your request, at the earliest, in late January, when you filed your complaint. It was not a violation of the APRA when the Clerk had not issued a response to a request that you had mailed at the same time that you filed your complaint. Until the Clerk has an opportunity to respond (seven days, plus time for you to receive the response by mail), the Clerk cannot violate the APRA. In addition, the Clerk has not received any request from you as of February 10 when the Clerk prepared his complaint response.

I enclose the material that the Clerk sent to me. If you have any additional requests for records, you should submit them to the Clerk. The Clerk has seven days to respond after receiving your request. Hence, you should wait at least 13 days after mailing your next request before considering whether to file a complaint, assuming you have not received a response.

## CONCLUSION

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

Sincerely,

Karen Davis  
Public Access Counselor

cc: Phillip D. Weaver