

April 26, 2006

Argelio Gonzalez
#974595
Indiana State Prison
P.O. Box 41
Michigan City, IN46361

Re: Formal Complaint 06-FC-59; Alleged Violation of the Access to Public Records Act by the Cass Circuit Court

Dear Mr. Gonzalez:

This is in response to your formal complaint alleging that the Cass County Circuit Court (“Court”) violated the Access to Public Records Act by denying you access to the license of translator Raymundo Canales. I find that the Court did not violate the Access to Public Records Act by failing to disclose a record that it does not maintain, but the Court did not timely respond to your request.

BACKGROUND

In a February 27, 2006 letter to the Court, you requested, under IC 5-14-3, information about whether or not a Raymundo Canales, a Spanish/English translator, had in fact a proper license for the state of Indiana to translate in open court. Based on information that I received from the Court, the Court received your request on March 1. On March 20, the Court sent you a letter enclosing a copy of Trial Rule 43(C) regarding Interpreters and Indiana Code 34-45-1-4 regarding Interpreter qualifications.¹ You allege in your formal complaint that this information was not responsive to your request, and that you would like a copy of the license.

¹Indiana Code 34-45-1-4 states: (a) An interpreter assisting a person under section 3 of this chapter may be:

- (1) retained by the party or witness; or
- (2) appointed by the court before which the action is pending.

(b) If an interpreter is appointed by the court, the fee for the services of the interpreter shall be:

- (1) set by the court; and
- (2) paid in a manner as the court may determine.

(c) The court may inquire into the qualifications and integrity of any interpreter, and may disqualify any person from serving as an interpreter.

The Court through Court Clerk Linda Crimmins responded to your complaint. Ms. Crimmins stated that the Court responded to your request by sending you the above-referenced information. Upon my further inquiry, I confirmed that the Court does not maintain, and has never possessed, a copy of any license of Mr. Canales.

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 by U.S. Mail, the public agency is required to respond within seven (7) days of the agency’s receipt of the request, or the request is deemed denied. IC 5-14-3-9(b). A public agency that does not maintain a record should so state clearly so that there is no confusion regarding why the public agency is not disclosing the record. However, a request for a record must be stated with reasonable particularity. IC 5-14-3-3(a).

Although you do not allege tardiness of the Court’s response in your complaint, I note that the Court’s response was sent more than seven days after receiving your request for a record. This late response was in violation of the Access to Public Records Act. However, the court did attempt to address your request for information on whether or not Mr. Canales had a proper license to translate in open court in Indiana. It did so by sending you copies of trial rules and statutes relating to the requirements to translate in Indiana courts. I note that these authorities do not establish any explicit duty on a court to ascertain that the translator possesses a license.

Had the court maintained a copy of a license relating to Mr. Canales’s ability to translate from Spanish to English, this record would have been responsive to your request and should have been disclosed. However, the Court does not maintain any such record; therefore, its failure to disclose it or send you a copy was not a denial of access under the Access to Public Records Act. I recommend that a public agency clearly state that it does not maintain a specific record when it is requested, if the record is requested with reasonable clarity.

CONCLUSION

For the foregoing reasons, it is my opinion that the Cass Circuit Court did not respond timely to your request for a record, but otherwise did not deny you a record under the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Linda Crimmins