

June 6, 2007

Joseph T. Williams-Bey  
#910763  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

*Re: Formal Complaint 07-FC-124; Alleged Violation of the Access to Public Records Act by the Clerk of the Indiana Court of Appeals*

Dear Mr. Williams-Bey:

This is in response to your formal complaint alleging that the Clerk of the Indiana Court of Appeals (“Clerk”) violated the Access to Public Records Act by failing to respond to your request. I find that the Clerk did respond to your request, and the Clerk is not required to provide you with the copies you requested free of charge in the absence of a court order.

#### BACKGROUND

You allege that you requested a copy of the briefs for a case called *Griffin v. State, Cause No. 1081S282*. You named the Indiana Court of Appeals in your complaint, but the person you alleged was responsible for the denial is the records coordinator in the Clerk’s office, Kevin Murley. You claim that you filed an affidavit of indigency with your request, and the records administrator failed to reply.

The enclosed response of the Clerk, submitted by Clerk Kevin Smith, details the responses that have been sent to you starting in April. Two briefs number 40 pages and 23 pages, and the cost of copies is \$1.00 per page, for a total of \$63.00. The Clerk explained to you that unless you obtained an order from the Court of Appeals to declare you indigent for purposes of receiving records at no cost, the Clerk was within his rights to deny you the records until you paid for the copies first.

## ANALYSIS

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). You state in your complaint that the Clerk failed to reply to you, but this allegation has no merit. The enclosed documentation substantiates that the Clerk did respond to your request and was willing to provide you with copies of the records.

I take your complaint to be that your affidavit of indigency entitles you to the records free of charge. A public agency is permitted to charge a fee for copies of public records under the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-8. In addition, a public agency may require a person to pay the copying fee in advance. IC 5-14-3-8(e). Further, nothing in the APRA requires that a public agency waive a copying fee.

No provision in section 8 specifies a copy fee for a state agency that is not included in the definition of "state agency" under IC 4-13-1-1. The term "state agency" does not include the judicial or legislative departments of state government. IC 4-13-1-1(b).

Nevertheless, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute *or is ordered by a court*. IC 5-14-3-8(f)(Emphasis supplied.) The enclosed order of Chief Justice Shepard sets the copying fee for Clerk records at \$1.00 per page. It is my opinion that this fee is authorized by the Access to Public Records Act. As the Clerk told you, if you petition the Court of Appeals successfully to waive the copying fee, the Clerk would send you the copies without cost to you.

## CONCLUSION

For the foregoing reasons, I find your allegation that the Clerk of the Indiana Court of Appeals violated the Access to Public Records Act to be without merit.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Kevin Smith