

March 19, 2007

Christopher Stephens
128 Pinto Way
Bloomingdale, GA 31302

Re: Formal Complaint 07-FC-43; Alleged Violation of the Access to Public Records Act by the Elkhart County Superior Court Clerk

Dear Mr. Stephens:

This is in response to your formal complaint alleging that the Elkhart County Superior Court 6 Clerk (“Clerk”) violated the Access to Public Records Act by failing to respond within the timeframes for response to three requests for records. I find that your transcript request was fulfilled within the requirements of the Access to Public Records Act. However, I find that the Clerk should have responded to your request for the other two items concerning payments.

BACKGROUND

You made two requests for records by certified mail addressed to the Elkhart County Superior Court 6 Clerk of Court. The first was for a record of any payment made to the mother, Jessica Sluss on behalf of Christopher J. Stephens II, including insurance claims and support payments from March 2004 to December 31, 2006. The second request was for “manuscript of payment record” for March 2004 through December 31, 2006. A third request was directed to Court Reporter Cynthia Guzzo and concerned the transcripts from four hearings.

You claim that the Court Clerk and Court Reporter have not responded to your requests. A response to your formal complaint was filed by Cynthia Guzzo, court reporter, at the Clerk’s request. Ms. Guzzo stated that your attorney filed a request for the transcript for the September 21, 2004 hearing, and that notice to your attorney that the transcripts would be provided after the court reporter received payment was sent to him on February 6. When you appeared in the office on February 23, 2007 and paid for the transcripts, they were provided to you.

No other issues concerning your complaint were addressed by Ms. Guzzo or the Clerk.

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 in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the 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).

Generally speaking, the APRA does not address the situation in which a litigant has filed a request with a court reporter to produce a transcription of a hearing. This is because the APRA does not extend the right to have a new record created. Hence, although you may have a right to the record of proceedings, including a transcription of the hearing, you are not entitled to have the hearing transcribed by a court reporter under the APRA. Once you paid the court reporter the transcription fee, you received the transcripts that were requested by your lawyer. No violation of the APRA is evident regarding this part of your complaint.

The Clerk has not explained whether or not she responded to your request for the payment information. The information must be disclosed unless it is exempt under section 4 of the APRA. The Clerk has not addressed this part of your complaint at all. If the Clerk did not respond to the other two requests, the Clerk violated the Access to Public Records Act. I recommend that the Clerk provide a response to your requests as soon as possible. In the alternative, you may file a lawsuit in superior court to compel the Clerk to disclose the records, under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Clerk of the Elkhart Superior Court violated the Access to Public Records Act if the Clerk failed to respond to your requests for records.

Sincerely,

Karen Davis
Public Access Counselor

cc: Stephanie Burgess