

May 9, 2007

Tyrone Frazier  
#910476 LOC CE522  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

*Re: Formal Complaint 07-FC-88; Alleged Violation of the Access to Public Records Act by Marion Superior Court Five*

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Marion Superior Court Five ("Court Five") violated the Access to Public Records Act by failing to respond to your request for an audio recording of a hearing. I find that Court Five did not receive a request for records from you, and therefore did not violate the Access to Public Records Act.

#### BACKGROUND

You allege that Judge Grant W. Hawkins of Marion Superior Court Criminal Division Room Five denied your request for a record by failing to respond. You had requested the audio CD recording of all the proceedings under Cause No. 49G05-0212-FB-294197.

Judge Hawkins responded to your complaint by letter, a copy of which is attached. He stated that your original request was sent to Criminal Court Four or to the Clerk, as that request was in Court Four's files. Judge Hawkins had not received any request for the audio CDs directed to him. Judge Hawkins observed that you were aware that the cause for which you seek records was transferred some time ago from Court Five to Court Four because you have filed various documents in that matter with Court Four, including apparently this request. Your complaint therefore is without merit.

## 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. Ind. Code 5-14-3-3(a). A public agency that receives a request for a record via U.S. Mail or facsimile must respond within seven days or the request is deemed denied. IC 5-14-3-9(b). A public agency cannot respond, and is not required to respond, to a request it has not received.

Although you allege that Judge Hawkins of Marion Superior Court Five ignored your request for a record, it is quite apparent this was not the case. Rather, Judge Hawkins never received a request for the record from you, because you sent the request to the Clerk. Therefore, I find your complaint is without merit.

## CONCLUSION

For the foregoing reasons, I find that Marion Superior Court Five did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Judge Grant W. Hawkins