



STATE OF INDIANA

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November 16, 2005

Tyrone Frazier
DOC # 910476
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 05-FC-213; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion Circuit Court

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Clerk of the Marion Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records.

BACKGROUND

You allege that on September 28, 2005 you filed a request for public records with the Clerk. You requested a copy of sentencing and guilty plea procedures (transcripts) concerning cause No. A15870082 and/or 87012782. You assert that under Criminal Rule 10 the Clerk is required to maintain the records for 55 years. As of October 11, 2005 you had not received a response from the Clerk. Therefore, you filed this formal complaint with the Office of the Public Access Counselor on October 17, 2005. You requested priority status for your complaint. Priority status was denied because you failed to allege any facts for which priority status may be granted pursuant to 62 IAC 1-1-3.

Mr. Tony Schaffer, Chief Deputy, responded to your formal complaint on behalf of the Clerk by letters dated October 25, 2005 and November 16, 2005. Copies of those letters are enclosed for your reference. Mr. Schaffer indicated that the Clerk did not receive your request prior to the filing of your complaint. My staff attorney confirmed with Mr. Schaffer via telephone that the Clerk received your record request for the first time as part of the formal complaint on October 18, 2005. Mr. Schaffer responded directly to the issue of the requested records by stating that you were notified in 2004 that the recordings of your hearing had been destroyed and that a transcript could not be produced.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven (7) days in which to respond. IC 5-14-3-9(b). If the public agency fails to respond within seven (7) days of its receipt of the request, the request is deemed denied. A public agency shall protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a).

The Clerk is a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk during regular business hours. IC 5-14-3-3(a).

Under the APRA the Clerk is required to respond to your request for records within seven (7) days of receipt of your request. If the Clerk had received your request and failed to respond within seven (7) days of receipt, then a violation of APRA would have occurred. In this instance the Clerk denied having received your request for records. If the Clerk did not receive the request, then its obligation to respond within seven (7) days was not triggered and no APRA violation occurred.

The Clerk has asserted that it does not maintain the tape recording because it was destroyed in 2004. Actually, you did not request the recording but rather, transcripts of the recording. The Clerk is not required to create a transcription of a tape recording under the APRA. You complain that the Clerk cannot create the transcripts because you believe the Clerk has improperly destroyed the recordings. You assert that the Clerk is required to keep the recording for 55 years pursuant to Indiana Criminal Rule 10. Under Criminal Rule 10, a recording of a guilty plea hearing is required to be maintained by the court for ten years in all misdemeanor and fifty-five years in all felony cases. Ind. Crim. Rule 10.

You have complained that it is a violation of the APRA for the Clerk to destroy the record in contravention of Crim. Rule 10. I am limited in my authority to opine outside of the APRA. Moreover, you have not provided enough information for this office to determine whether Crim. Rule 10 applies to the records you seek. However, if the tape recording of a guilty plea hearing were required to be maintained at the time of your request for it, the destruction or loss of the record may be a violation of the Access to Public Records Act. IC 5-14-3-7(a).

CONCLUSION

For the foregoing reasons, I find that if the Clerk of the Marion Circuit Court did not receive your request for records it did not violate the Access to Public Records Act by failing to respond to the request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Tony Schaffer