

September 8, 2004

Mr. Marc Stults, #891999
Indiana Department of Correction
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 04-FC-134; Alleged Violation of the Access to Public Records Act by the Clerk of the Edgewood Town Court

Dear Mr. Stults:

This is in response to your formal complaint alleging that the Clerk of the Edgewood Town Court ("Clerk") violated the Access to Public Records Act ("APRA"), I.C. §5-14-3, by denying you access to public records. Specifically, you allege that the Clerk failed to respond to your request for access to public records in a timely manner. For the following reasons, I find that the Clerk of the Edgewood Town Court violated the Access to Public Records Act.

BACKGROUND

On July 9, 2004, you submitted to the Edgewood Town Court a request for all documents pertaining to a battery committed by Ms. Rose Diaz on August 3, 1998. Having failed to receive a response, you submitted a formal complaint to this office, which I received on August 10, 2004. I forwarded a copy of your formal complaint to the Clerk and received a telephone response from Ms. Jennifer Davisson on August 18, 2004. During that telephone call, Ms. Davisson, Clerk of the Edgewood Town Court, advised this office that at the time the Clerk's Office received Mr. Stults's request, the Clerk was new to the office and had been unable to locate the documents requested. She advised this office that the documents have since been found and were forwarded to Mr. Stults on August 17, 2004.

ANALYSIS

The Clerk is a public agency for purposes of the Access to Public Records Act. A public agency that receives a request for records under the Access to Public Records Act has a specified

period of time to respond to the request. I.C. §5-14-3-9(b). When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b). A timely response to the request need not include production of the requested documents. A public agency may comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production.

Ms. Davisson acknowledges that a response to your records request was not forthcoming within the seven (7) day time period. She states that the reason the response was not forthcoming is the Clerk's Office had been unable to locate the documents you requested. Notwithstanding the likelihood that the lack of response was not in bad faith, I find the Clerk violated the Access to Public Records Act by failing to respond to your records request within seven (7) days of its receipt of your letter.

I note that while this office finds a violation of the Access to Public Records Act insofar as the timeliness of the Clerk's response, Ms. Davisson has since forwarded the requested documents to you, and believes that your request has been satisfied.

CONCLUSION

For the foregoing reasons, I find that the Edgewood Town Court's failure to respond to your request for documents within seven (7) days of its receipt of your request was a violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jennifer Davisson, Edgewood Town Court: w/o enclosures