

November 10, 2004

Mr. Paul Berkebile
1454 West 94th Place
Crown Point, IN 46307

Re: Formal Complaint 04-FC-188; Alleged Violation of the Access to Public Records Act by the Lake Superior Court, County Division II

Dear Mr. Berkebile:

This is in response to your formal complaint alleging that the Lake Superior Court (“Court”) violated the Access to Public Records Act by failing to respond to your request for records. I find that Lake Superior Court failed to respond within the timeframes of the Access to Public Records Act.

BACKGROUND

On October 1, 2004, you filed a Verified Public Records Request under Case No. 45D08-04-IF-4547. You requested “the full name and a legible photocopy of the oath of office for any judge or magistrate that will be presiding during the next scheduled court date.” You allege in your complaint, which was filed with and received by this office on October 13, that the Court failed to respond to your request.

I sent a copy of your complaint to Honorable Sheila Moss, who responded by sending a copy of a document that she sent you on October 19, 2004, which she refers to as the Oath of Office. She also suggests that in the future, you address any record request to the Lake County Clerk.

ANALYSIS

Any person may inspect the public records of a public agency during the regular business hours of the agency, unless an exception to disclosure applies to the record. IC 5-14-3-3(a). The Court is subject to the Access to Public Records Act because it is an entity that exercises judicial power. IC 5-14-3-2.

An agency that receives a request for a record must respond to the request within 24 hours or within seven days, depending upon the mode of delivery of the request. Requests delivered in person must be responded to within 24 business hours. IC 5-14-3-3-9(a). You claim to have “hand-delivered” the request on Oct. 1. Because the Court appears to not have responded until well after seven days, it is not necessary for me to consider whether filing a request for records as a verified motion in court would trigger the shorter timeframe for response. Although the Court has not indicated that this mode of delivery is problematic, I express some reservations that filing a request for records under a case number may not allow the court the best means to quickly identify a request for records and timely respond. I therefore leave that question for another day. However, I suggest that any future requests for court records omit any formalities of formal pleadings, and be addressed to the Clerk of the Court.

In any case, the Court has not responded timely to your request because it did not respond until October 19, well after seven days of receipt of your request. Also, there is some question whether the record it sent you is responsive to your request, because it appears to be Judge Moss’s appointment letter. I am not aware of any discussions that you may have had with the Court regarding its interpretation of your request, or whether it maintains documentation of the Oath of Office. As your complaint is limited to the failure of the Court to respond timely, I do not consider whether the Court’s tendering of the appointment letter was deficient.

CONCLUSION

For the foregoing reasons, I find that the Lake Superior Court did not timely respond to your request for records, in violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Honorable Sheila Moss