

November 18, 2004

Mr. Chester L. Wilms, #943594
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 04-FC-196; Alleged Violation of the Access to Public Records Act by the Indiana Attorney General's Office

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the Indiana Attorney General's Office ("Attorney General") violated the Access to Public Record Act by denying you access to a public record. For the following reasons, I find that the Indiana Attorney General's Office did not violate the Access to Public Records Act.

BACKGROUND

On September 24, 2004, you mailed a written request for access to public records to the Indiana Attorney General's Office. Specifically, you requested a copy of the probable cause affidavits relating to Cause Number 02A04-9806-CR-00326. On October 4th, the Attorney General's Office responded to your request, advising you that it had no documents responsive to your request. Mr. Zoeller also advised you that you may be able to obtain the records you seek from the Clerk of Courts, and he provided the mailing address for that office. You then filed a formal complaint, which was received by this office on October 19, 2004. I forwarded a copy of your complaint to the Attorney General's Office, and Mr. Gregory F. Zoeller, Chief Counsel, responded. I have enclosed a copy of his response for your reference.

In his response, Mr. Zoeller states that the Attorney General's Office did not deny you access to the records you requested; rather, they were unable to provide them to you because those records are not maintained by the Attorney General's Office.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, unless that record is confidential or otherwise nondisclosable under Ind. Code §5-14-3-4. IC 5-14-3-3(a). The Attorney General's Office is a public agency for purposes of the APRA. IC 5-14-3-2. If a public agency receives a request for access to public records by U.S. Mail or facsimile, the agency is required to respond within seven (7) days its receipt of that request. IC 5-14-3-9(b). This office adds three mailing days to the date that a person mails his request to determine when the agency received the request. The Attorney General responded within seven days of September 27 when it responded to you on October 4.

You allege that the Attorney General's Office denied you access to a public record; the Attorney General's Office told you that it does not have the records you requested. A public agency is not required to produce a document that it does not have. The Attorney General's Office does not maintain the records you seek, and had advised you of that fact. The Attorney General complied in all respects with the Access to Public Records Act because it timely responded to your request by telling you it did not maintain the record you were seeking.

CONCLUSION

For the foregoing reasons, the Indiana Attorney General's Office did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Gregory F. Zoeller