

June 30, 2005

James W. Walsh
DOC # 883121
Wabash Valley Correctional Facility
P.O. Box 2222
Carlisle, IN 47838

Re: Formal Complaint 05-FC-108; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion County Circuit Court.

Dear Mr. Walsh:

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

BACKGROUND

On May 31, 2005 you filed a formal complaint with the Office of the Public Access Counselor. The complaint was assigned formal complaint # 05-FC-108. Your complaint stated that you had filed a request for records with the Clerk and that she failed to respond. You enclosed a copy of the request, dated May 2, 2005, with your complaint. You requested copies of the court order and transcripts in a dissolution of marriage case.

I forwarded a copy of your complaint to the Clerk. Chari E. Burke, Deputy Clerk of Court Administration, responded on behalf of the Clerk by letter dated June 3, 2005. A copy of the response is enclosed for your reference. Ms. Burke stated that the Clerk had not received your request.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 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 days in which to respond. IC 5-14-3-

9(b). If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The Clerk is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(1). 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 her obligation to respond within seven (7) days was not triggered and no APRA violation occurred.

CONCLUSION

For the foregoing reasons, I find that if the Clerk of the Marion County Circuit Court did not receive your request for Public Records then she had no duty to respond under the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chari E. Burke