

July 25, 2005

Adrian L. Broome
D.O.C. # 957185
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 05-FC-123; Alleged Violation of the Access to Public Records Act by the Hamilton County Clerk of Courts

Dear Mr. Broome:

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

BACKGROUND

On June 24, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-123. You stated, in your complaint, that you had sent a request for public records to the Clerk in "late May." As of June 15, 2005 you had not received a response to your request.

Ms. Tammy Baitz, the Hamilton County Clerk of Courts responded to your complaint by letter dated June 27, 2005. She stated that since you were not requesting a record for which she is responsible her staff did not forward her a copy of your request for records, which was received on May 17, 2005. She therefore, did not respond to your request. She stated that upon receipt of a second letter from you in June she responded by letter dated June 16, 2005. She provided a copy of that letter with her response. In that letter she states that she is responding to a June 10, 2005 letter from you and providing the documents that she maintains. She stated that she did not maintain all of the records that you were seeking and was, therefore, forwarding the requests to the court reporter for Superior 1.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours. IC 5-14-3-3(a). Under the Access to Public Records Act, a public agency is required to respond to a request for records within a certain period of time. For mailed requests, the public agency is required to issue a response within seven (7) calendar days. IC 5-14-3-9(b). Failure to respond is deemed to be a denial of the record. If the public agency intends to deny a record, the denial must be in writing and include a statement of the specific exemption or exemptions that apply to the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). A response may be acknowledgment that the agency received the request and a statement regarding whether the public agency has responsive records.

Although an agency may not maintain the requested record it must still respond to the request within seven (7) days and should inform the requestor that it does not maintain the record. In this instance, the Clerk was required to provide a response within seven (7) days of receipt of the request, and failed to do so. Additionally, the Clerk was required to inform you whether she maintains a record that is responsive to your request.

The request is considered received on the date that the agency receives the request. The date is based upon the date it is received by the agency, not the date upon which a particular individual within the agency receives it.

CONCLUSION

For the foregoing reasons, I find that the Hamilton County Clerk of Courts violated the Access to Public Records Act when she failed to respond to your request for public records within seven (7) days of receiving the request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Tammy Baitz