

August 10, 2005

Kevin E. Salter  
D.O.C. # 974820  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361

*Re: Formal Complaint 05-FC-138; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion County Circuit Court.*

Dear Mr. Salter:

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 provide you with the document that you requested.

#### BACKGROUND

On July 15, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-138. You requested priority status for your complaint. However, you failed to allege any facts warranting priority status pursuant to 62 IAC 1-1-3; therefore, your request for priority status has been denied.

You allege that you have requested a copy of the original probable cause affidavit in cause # 49G049603CF035585 from the Clerk. The Clerk sent you an amended probable cause affidavit.

Ms. Chari Burke responded to your complaint on behalf of the Clerk by letter dated July 20, 2005. A copy of that letter is enclosed for your reference. Ms. Burke provided copies of your requests for records. The request that you sent to the Clerk on June 9, 2005 requested the probable cause affidavit. Ms. Burke explained that when a document is amended, that the amended version takes the place of the original in their filing system. For that reason when you asked for the probable cause affidavit the current probable cause affidavit was sent to you. On July 1, 2005 you forwarded another request to the Clerk, this time explaining that you were seeking the original probable cause affidavit. Ms. Burke stated that your request was received on

July 6, 2005 and that the original was mailed to you on July 7, 2005. A hand-written note, by the Judge, on the copy of your July 1, 2005 instructs, "7-7-05 Send copy of original P.C. to defendant."

You mailed your formal complaint to this office on July 12, 2005. On July 15, 2005 you sent a letter to this office stating that you received the Clerk's response to your July 1, 2005 request on July 14<sup>th</sup>. You state that what you received was another amended probable cause affidavit. You enclosed with your complaint a copy of a probable cause affidavit which has "AMENDED" hand-written across the top.

Although the July 1, 2005 request was not included in your complaint, I may issue an informal inquiry response to address your July 15, 2005 letter. IC 5-14-4-10(5). I am incorporating that response into this opinion.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). The Clerk is a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person may inspect and copy the public records of the Clerk during the regular business hours, unless the records are excepted from disclosure as confidential or otherwise nondisclosable under IC 5-14-3-4. IC 5-14-3-3(a).

When a person makes a request for records from a public agency, he must "identify with reasonable particularity the record being requested." IC 5-14-3-3(a). Your June 9, 2005 request stated that you wanted a copy of the probable cause affidavit for cause # 49G049603CF035585. The Clerk sent to you a copy of the current probable cause affidavit from that file. There was no indication in your request that you sought any other document. If you intended to request the original probable cause affidavit, your request was not reasonably particular. The Clerk did not violate the APRA by sending you what you requested.

Regarding your letter of July 15, 2005, my office has spoken with Ms. Burke in regards to the probable cause affidavit that was sent to you on July 7, 2005. It was the intention of the Clerk to forward you the original probable cause affidavit on that date. Ms. Burke believed that the original was sent to you as intended; however, she has no indication in her file as to which probable cause affidavit was actually sent to you on July 7, 2005. There are two probable cause affidavits in the file; one matches the one that you forwarded to me with a handwritten "amended" at the top. The other is undated and does not say "amended". Ms. Burke is forwarding a copy of that probable cause affidavit to you in order to ensure that you have received copies of both probable cause affidavits in the file.

## CONCLUSION

For the foregoing reasons, I find that the Clerk of the Marion County Circuit Court did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Chari Burke