

February 23, 2005

Mr. Tyrone Frazier  
D.O.C. #910476  
Indiana State Prison  
P.O. Box 41  
Michigan City, Indiana 46361

*Re: Consolidated Formal Complaints 05-FC-21; 05-FC-30; Alleged Violation of the  
Access to Public Records Act by the Marion County Clerk's Office*

Dear Mr. Frazier:

This is in response to your formal complaints alleging that the Clerk of the Marion County Court ("Court" or "Clerk") violated the Access to Public Records Act by failing to provide you with court records.

#### BACKGROUND

Seven of your complaints have been consolidated under 05-FC-21. In addition, you have sent me other complaints that are identical to some of the seven records you seek under 05-FC-21. Generally, you are seeking court records related to the following cause numbers:

Cause Number: 49F18-9512-DF-189713  
Cause Number: 49G16-0206-PO-001106  
Cause Number: 49F18-9411-CF-153135  
Cause Number: 49F09-9607-DF-104096  
Cause Number: 49F09-0008-DF-151284  
Cause Number: 49G05-8908-CF-096817  
Cause Number: 49G05-0212-FB-294197

You also filed a separate complaint on February 3, which I assigned number 05-FC-30, regarding the identical record complained of in cause number 49G16-0206-PO-001106 above. Therefore, I have consolidated 05-FC-30 with 04-FC-21. I sent a copy of your complaints to the Clerk of the Marion Circuit Court. Chari Burke, Deputy Clerk of Court Administration, sent a

written response, which I enclose for your reference. I also sent a copy of complaint #05-FC-30 to the Clerk of the Marion Circuit Court. Court Administrator Mark Renner responded. A copy of his response is enclosed for your reference. I address each complaint in turn, by reference to the cause number.

## ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind.Code 5-14-3-3(a). The Court meets the definition of a "public agency" under the APRA. IC 5-14-3-2. A public agency that receives a request for records by U.S. Mail must respond within seven (7) calendar days of its receipt of a request, or the request is deemed denied. IC 5-14-3-9(b).

As I stated above, public records are to be available for inspection and copying by any person, unless excepted from disclosure under IC 5-14-3-4. One such exception is for records that are declared confidential by or under rules adopted by the supreme court of Indiana. IC 5-14-3-4(a)(8). The supreme court of Indiana has adopted several rules that make certain court records confidential. The primary rule respecting the confidentiality of court records is Ind. Administrative Rule 9. Under Administrative Rule 9, certain types of information or documents contained in court records are confidential, or are disclosable only under certain circumstances. Also, a record that is the subject of a specific court order is disclosable only in accordance with that court order. Admin. R. 9(G)(1)(c). Still, Administrative Rule 9 recognizes that many court records are disclosable to a person unless those records are excepted from disclosure elsewhere in the rule. Admin. R. 9(B)(1). I now turn my attention to the specific complaints that you have alleged against the Marion County Court Clerk.

*49F18-9512-DF-189713*

In this complaint and the corresponding request for records which you appended to your complaint, you allege that Lisa K. Smith of the Marion Circuit Court denied you a trial transcript and the flat file of all court documents. The Clerk responded that it has not received a copy of your request, and indeed, you have addressed your request to the court reporter of the court, who is a court employee. Since you requested a copy of your transcript, it appears that you did not address your request to the public agency, but rather to an individual who has sole responsibility for producing transcripts subject to the appellate rules regarding preparation of a record. This appears to have prevented the Clerk from receiving the request. Ordinarily, I have held that if a public agency receives a request addressed to the wrong individual within the public agency, it is still the responsibility of the public agency to timely respond. However, in this case, your request was confused with a separate court procedure for obtaining transcripts. In any event, the Court is under no obligation to transcribe the tape of a hearing for you under the requirements of the APRA. In addition, the electronic recording of a criminal hearing is subject to confidentiality under a different supreme court rule, Ind. Crim. Rule 5 and Ind. Crim. Rule 10. Therefore, there is no merit to your complaint in this cause number.

*Cause Number: 49G16-0206-PO-001106*

I have consolidated your complaint in 05-FC-30 under this part of complaint #05-FC-21. This record concerns your request for the transcript of a protective order hearing. You were not a party to the protective order matter. I do not believe that the electronic recording has been previously transcribed. Therefore, your request for a copy of the transcript may be properly denied because there is no duty under the APRA that the Court produce a transcription from the electronic recording at your request.

Also, at least part of the transcript, if one exists, may contain information about witnesses, victims, and other identifying information that is subject to redaction by the Court. Admin.R.9(G)(1)(b)(xiii); (G)(1)(e). Nevertheless, unless a transcription has been prepared and is maintained by the Court, the Court is not obliged to provide a transcribed record of the protective order hearing to you.

*49F18-9411-CF-153135*

In this request, you are seeking a transcript of the guilty plea hearing. Again, you addressed your complaint and request for records to Lisa K. Smith, the court reporter. It appears that the Clerk may not have received your request as it was directed to the court reporter. As stated previously, you must seek a transcription of the hearing through the appellate procedures for getting a record of proceedings. Under Crim. R. 10, you are not entitled to a copy of the electronic recording of the hearing, and the Court is not required to provide a transcription of an electronic recording under the APRA.

*49F09-9607-DF-104096; 49F09-0008-DF-151284*

I have consolidated these matters for purposes of discussion because the basis for nondisclosure is identical. You have stated that you have received the trial transcript in these causes in accordance with October 2003 orders of the chief judge of the Indiana Court of Appeals (copies of said orders were supplied to me). In addition, under the first cause number above, the Clerk's office file contains an order of the Court of Appeals dated December 14, 2004, indicating that the State Public Defender has already received a copy of the file on your behalf and had transmitted the record to you. It appears that you have already been provided the records under these cause numbers. However, you state that under both cause numbers, you are missing the record of the "pre-trial conference."

Under the APRA, a person is not entitled to numerous copies of the same record from a public agency. The Access to Public Records Act provides that a *public agency* allow inspection and copying of records. To the extent that you believe that your counsel has not provided you with part of the court record in these causes, you have not raised an issue under the Access to Public Records Act.

49G05-8908-CF-096817

In this cause, you are seeking transcripts for your post conviction relief petition. You do not state whether you filed your petition for post conviction relief *pro se* or through counsel, but the Clerk maintains that you are represented by counsel through the State Public Defender's office. Although a person who is litigating a case may avail himself or herself of the Access to Public Records Act, it is not apparent that you had requested the record of proceedings under the APRA rather than through a Motion for the Record of Proceedings. In fact, the Clerk has indicated that you have sought records through the filing of a motion. The Access to Public Records Act does not provide a remedy for a litigant seeking a court record through a Motion for a Record of Proceedings in connection with a post conviction relief petition. It appears that you are attempting to utilize the complaint procedures of the Office of the Public Access Counselor to address your multitude of requests for records of proceedings in connection with post conviction relief. Unless you can demonstrate that you requested a court record from the Clerk of the Court under the APRA rather than as a motion to a court, I find that you have not raised any issues under the APRA.

49G05-0212-FB-294197

You filed this complaint naming the City-County Building as the public agency, and the same agency appears on the request for a record. In this request, you seek a copy of the audiotaped conversation between you and Detective James Quigley. You enclosed a copy of the State's Supplemental Notice of Discovery Compliance. This document states that the State of Indiana has identified additional items that it is making available to defense counsel pursuant to the court's discovery order.

Your request for this record was never received by the Clerk's Office, and it is not addressed to a public agency. There are many public agencies that have offices in the City-County Building in Indianapolis. Therefore, I cannot find any violation of the APRA in the Clerk's failure to respond to this request. In any event, the Clerk does not maintain this record because it has never become part of a court file. Also, it appears that this audiotape is a record that was subject to a discovery order, which is not a matter that can be addressed under the Access to Public Records Act.

#### CONCLUSION

For the foregoing reasons, I find that the Clerk of the Marion Circuit Court did not violate the Access to Public Records Act. I would advise you that whenever you are seeking a court record from a Marion County Court, your request should be addressed to the Clerk of the Marion Circuit Court, 200 East Washington Street, Suite W-122, Indianapolis, Indiana 46204. Also, when filing a complaint with the Office of the Public Access Counselor, it is necessary for you to fully complete the formal complaint form by identifying the record you have been denied, the date that you requested the record, and any response of the public agency to your request. Any complaint must be filed within 30 days of the denial of the record. IC 5-14-5-7.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Chari E. Burke  
Mark F. Renner