



# STATE OF INDIANA

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Karen Davis

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January 18, 2006

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

*Re: Formal Complaint 05-FC-258; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court Clerk's Office*

Dear Mr. Frazier:

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

### BACKGROUND

On December 19, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint, dated December 14, 2005, was assigned formal complaint number 05-FC-258.

You indicate that on November 11, 2005 you filed a request for public records with the Clerk's Office. Specifically, you requested a copy of all legal entries and documents concerning cause No. 49G05-8908-PC-086817. You allege that you had not received any response as of December 14, 2005.

Ms. Chari Burke responded to your formal complaint on behalf of the Clerk's Office by letter dated December 23, 2005. Ms. Burke stated that she received your request on November 22, 2005. She responded by letter on November 23, 2005. However, her letter indicates that she is responding to requests dated November 4, 2005 and November 13, 2005. In that letter she informed you that the cause number for which you requested records was not a case concerning yourself. Therefore, you could not obtain those records free of charge unless you submitted information from a judge showing that you are indigent. She indicated that the copying fee is \$1.00 per page and could amount to several hundred dollars. She invited you, if you were still interested in obtaining that file, to inform her so that she could provide you with the exact cost for copying.

The Clerk's Office received further correspondence from you on November 29, 2005 that provided the correct cause number of the file containing the records you seek. On December 1, 2005 Ms. Burke wrote to you to acknowledge receipt of that request and to indicate that you would be informed of a final determination regarding your request within 30 days. On December 14, 2005 Ms. Burke mailed to you a copy of all records contained in the case file for the corrected cause number 49G05-8908-PC-096817.

There is some discrepancy in the dates provided by Ms. Burke. My staff attorney spoke via telephone on January 17, 2006 with Ms. Burke regarding the dates of your request and the dates in Ms. Burke's response. Ms. Burke asserted that although your request is file stamped on November 21, 2005 she did not receive the request until November 22, 2005. Ms. Burke also acknowledged that her letter to you of November 23, 2005 indicated that it was in response to requests dated November 4, 2005 and November 13, 2005 and received on November 22<sup>nd</sup>. Finally, Ms. Burke indicated that she receives many duplicate requests from you. Therefore, she believed that she responded to the November 11<sup>th</sup> request in her November 23, 2005 letter to you but she could not verify that. However, it is clear that the November 23<sup>rd</sup> letter does address the same records requested in your November 11<sup>th</sup> request. The records were provided on December 14, 2005.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 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). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven days of its receipt of the request, the request is deemed denied.

The Clerk's Office received your request for records on November 21, 2005. Ms. Burke responded on November 23, 2005 to requests for records that she received on November 22, 2005; however, the letter did not specify that it was in response to your request dated November 11, 2005. If the Clerk's Office did not respond to your November 11, 2005 request within seven (7) days of its receipt of the request on November 21, 2005 it violated the Access to Public Records Act.

#### CONCLUSION

For the foregoing reasons, I find that if the Marion County Superior Court Clerk's Office did not respond to your November 11, 2005 request within seven (7) days of receiving it on November 21, 2005 it violated the Access to Public Records Act. Nevertheless, the Marion County Superior Court Clerk's Office did provide the requested records to you on December 14, 2005 after you provided the correct cause number.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Chari Burke