

June 14, 2005

John C. Chupp
DOC # 21879
Location C435
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: Formal Complaint 05-FC-98; Alleged Violation of the Access to Public Records Act by the Muncie City Court Clerk.

Dear Mr. Chupp:

This is in response to your formal complaint alleging that the Muncie City Court Clerk (“Clerk”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for public records.

BACKGROUND

On May 16, 2005 you filed a formal complaint with the Office of the Public Access Counselor alleging a violation of the APRA by the Clerk. Your complaint was assigned formal complaint number 05-FC-98. You complained that “Docket Sheets were denied on David Wayne King’s Arrest and conviction for Driving while Suspended and Possession of Marijuana in Delaware County Court.” You stated that the date of the denial was April 22, 2005, but did not provide any other information. You did not provide information concerning when your request was made or how it was made.¹ You also did not state whether you believe a denial of your records request occurred because the Clerk sent you a written denial or because she failed to respond to your request.

I forwarded a copy of your complaint to the Clerk. Clerk Phyllis Reagon responded by fax on May 17, 2005. Her response was to state, “Need more information concerning David Wayne King. How was request made? We have two with that name different B-day & SS# Which we would have had to know to make sure it was the one requested. This is not info. we

¹ If it cannot be determined from the complaint or information provided by the agency when the request for records was made, I may have to reject future complaints.

refuse. We use Blockout when giving to someone else.” A copy of the Clerk’s response is enclosed for your reference.

As Ms. Reagon’s response seemed to indicate that the request might not have been received, my office called her to confirm the contents of her response. Ms. Reagon stated that she could not say whether she received your records request or not. She did state that no response had been sent to you. She also stated that she had records of two people by the name of David Wayne King and would need further clarification from you as to which you one you were seeking information on.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency’s regular hours of business, except as provided in section 4 of the APRA. IC 5-14-3-3(a). An agency is required to respond to a request for records within certain timeframes. If a request is mailed, sent by facsimile, or sent by electronic mail, the agency is required to respond within seven (7) days of its receipt of the request. 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. A failure to respond timely to a request for records is deemed a denial under the APRA. IC 5-14-3-9(a).

A public agency is required to respond to a request for public records within seven (7) days of receipt of the request. The agency’s duty to respond is not triggered until the agency receives the request. Here there is a question as to whether your request had been received by the Clerk. She cannot say with certainty whether it was or not. Had you provided any information regarding the date upon which your request was mailed, the form of your request, or any other information concerning your request it might have helped to resolve any doubts over the receipt of the request.² Based on the Clerk’s statement that she did not send you any response letter, and that she does not know if she received the request, I am assuming that your complaint is for the Clerk’s failure to respond.³ If the Clerk received your complaint, then her failure to respond within seven (7) days is a violation of the APRA. Further, I recommend that you supply as much information about David Wayne King as possible, or authorize the Clerk to send you the relevant records pertaining to both individuals. The Clerk may charge you the statutory copying fee and require advance payment.

CONCLUSION

For the foregoing reasons, I find that if the Muncie City Court Clerk received the request for public records the failure to respond within seven (7) days is a violation of the Access to Public Records Act.

² While you are not required to provide a copy of your request for public records, I usually find such attachments useful in analyzing formal complaints.

³ Since she states that she did not send you any letter, I can safely assume that your complaint was not based upon a letter of denial.

Sincerely,

Karen Davis
Public Access Counselor

cc: Phyllis Reagon