

February 14, 2006

Stuart Showalter  
P.O. Box 374  
Lebanon, IN 46052

*Re: Formal Complaint 06-FC-16; Alleged Violation of the Access to Public Records Act by the Delaware County Circuit Court*

Dear Mr. Showalter:

This is in response to your formal complaint alleging that the Delaware County Circuit Court (“Court”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for records. I find that the Court did not violate the APRA.

#### BACKGROUND

You assert in your formal complaint that you mailed a request for records to the Court on December 8, 2005. The inside address on your letter was “100 West Main Street, Muncie, IN.” You claim that the Court violated the Access to Public Records Act because it did not respond to your request for records related to the security level and ownership of the Youth Opportunity Center (“YOC”).

I sent a copy of your complaint to the Court. I received a letter from Honorable Richard A. Dailey, Judge of Delaware Circuit Court 2. In addition, I received a letter from Karen D. Wenger, Clerk of the Circuit Court. I have enclosed copies of their letters for your reference. Neither the Court nor the Clerk ever received your request. None of the other courts in the Delaware Circuit have received your request. Judge Dailey indicated that the YOC is a private, not-for-profit entity that is not an extension of the Court, as you believed.

#### 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). The Court is a public agency under

the APRA. IC 5-14-3-2(1)(1). A public agency that receives a request for a record via U.S. Mail is required to respond to the request within seven (7) days of receipt. IC 5-14-3-9(b). If a public agency has not received a request, it is not obliged to respond, and no violation of the APRA would occur in that event.

Although you addressed your request to the Delaware Circuit Court, the address is not that of the Court. The Court's address, as indicated by the letterhead of Judge Dailey, is 100 West Washington Street. I readily found this information by visiting [www.in.gov/judiciary/delaware](http://www.in.gov/judiciary/delaware). Because you did not properly address the request for records to the Court, the Court did not violate the APRA when it did not respond to the request that it did not receive. I recommend that you call the Court or the Clerk's office, depending on which public agency you intend to request records from, when you are unsure where to mail a request for records.

It is not entirely clear whether the Court maintains any records regarding the YOC; the Court merely informed me that the YOC is a private entity that is not an extension of the Court. Whether or not the YOC is an extension of the Court, if the Court maintains the records you request regarding the YOC, it should disclose them, or state why they are exempt.<sup>1</sup> I recommend that you seek clarification from the Court regarding whether or not the Court maintains the records you seek. If a public agency does not maintain a responsive record, it should clearly say so. Otherwise, it can be difficult to discern whether the public agency merely believes that the records should be sought from the entity that is the creator of the records.

A public agency includes any entity that is subject to audit by the state board of accounts. IC 5-14-3-2(1)(3)(B). If the Youth Opportunity Center is subject to audit by the state board of accounts, it is a public agency, and its records are subject to disclosure under the APRA. The state board of accounts can inform you whether the YOC is subject to audit.

## CONCLUSION

For the foregoing reasons, I find that the Delaware Circuit Court did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Judge Richard A. Dailey  
Karen D. Wegner

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<sup>1</sup> "Public record" is broadly defined: Any writing, paper, report, study...or other material that is created, received, retained, maintained, or filed by or with a public agency..." IC 5-14-3-2(m).