

October 12, 2004

Mr. Eric Smith, #112675
Maximum Control Facility
P.O. Box 557
Westville, IN 46391-0057

Re: Formal Complaint 04-FC-160; Alleged Violation of the Access to Public Records Act by the Marion County Superior Court

Dear Mr. Smith:

This is in response to your formal complaint alleging that the Marion County Superior Court ("Court") violated the Access to Public Records Act, I.C. §5-14-3, by failing to respond to your request for records. For the following reasons, I find that the Marion County Superior Court did not violate the Access to Public Records Act.

BACKGROUND

Your complaint alleges that on August 9, 2004, you requested from the Marion County Superior Court records relating to the criminal proceedings (Plea Agreement and Probable Cause Affidavit) of Terrance Shane, D.O.C. #112904. Having received no information from the Court, you filed a formal complaint. I received your formal complaint on September 10, 2004, and I forwarded a copy to the Court. Ms. Doris Anne Sadler, Marion County Clerk, responded. I have enclosed a copy for your reference.

Ms. Sadler states that the Court did not received your request. She points out that the address you listed for the Court in your complaint is incomplete, and that if that is the same address used when you submitted your original request, it is likely that the request was never received by the Court.

ANALYSIS

The Marion County Superior Court is a public agency for purposes of the Access to Public Records Act. A public agency that receives a request for records under the APRA has a

specified period of time to respond to the request. I.C. §5-14-3-9(b). A public agency may comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production of the requested document.

When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. I.C. §5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b). However, a public agency must first receive a request in order to be responsible for a response under I.C. § 5-14-3-9. *Opinion of the Public Access Counselor 03-FC-25*.

The Court expressly denies receiving your August 9, 2004 request. You provide no copy of your request or any evidence establishing that the request was posted by you on that date, and you provide no proof that it was subsequently received by the Court. Accordingly, I decline to find the Court in violation of the Access to Public Records Act for failing to timely respond to your request for records it alleges it never received. It should be noted that the Court's response encourages you to resubmit your request to the following address: 200 East Washington Street, Suite W-122, Indianapolis, IN 46204.

CONCLUSION

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

Sincerely,

Karen Davis
Public Access Counselor

cc: Doris Anne Sadler