

October 14, 2004

Mr. James R. Stephens, #996056  
Pendleton Correctional Facility  
P.O. Box 30  
Pendleton, IN 46064

*Re: Formal Complaint 04-FC-165; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion County Circuit Court*

Dear Mr. Stephens:

This is in response to your formal complaint alleging that the Clerk of the Marion County Circuit Court ("Clerk") violated the Access to Public Records Act ("APRA") by failing to respond to your requests for access to public records. For the following reasons, I find that Clerk of the Marion County Circuit Court did not violate the Access to Public Records Act.

#### BACKGROUND

You allege that you submitted to the Clerk a request for production of documents on June 29, July 16, August 2, August 9, and August 30, 2004. You state that you received no response to your June 29 and your July 16 requests. On August 2<sup>nd</sup>, you submitted another request for the information. You allege that the Clerk responded on August 5<sup>th</sup> by asking you to provide the cause number. Pursuant to the Clerk's response, you resubmitted your request, with the cause number, on August 9<sup>th</sup>. You received no response. You submitted the request again on August 30, and again, you received nothing. You then filed a formal complaint, which was received by this office on September 15, 2004. You requested priority status; however, as your complaint alleges none of the requirements set out in 62 IAC 1-1-3, your request for priority status was denied.

I forwarded a copy of that complaint to the Clerk's Office. Ms. Chari Burke, Deputy Clerk of Court Administration, responded. I have enclosed a copy of her response for your reference. Ms. Burke states that the Clerk has no record of having received any of your requests for documents or having sent you the response that you allege you received on August 5th.

#### ANALYSIS

I first address your complaint with respect to your June 29, July 26<sup>th</sup>, and August 2<sup>nd</sup> requests. Indiana Code §5-14-4-7 states, in pertinent part, that a person who chooses to file a

formal complaint with this office must do so not later than thirty (30) days after the alleged denial. Even assuming that the agency received your request and simply failed to respond, your complaint with respect to those requests is not timely filed. However, the issues raised in your complaint with respect to those three requests are identical to the issues raised with respect to your other requests, which have been filed timely. Therefore, I address this issue with respect to only your August 9<sup>th</sup> and 30<sup>th</sup> requests, but note that the allegations with respect to the June 29<sup>th</sup>, July 26<sup>th</sup>, and August 2<sup>nd</sup> requests are analogous.

The Clerk of the Marion County Circuit Court is a public agency for purposes of the Access to Public Records Act. I.C. §5-14-3-2. A public agency that receives a request for records under the APRA has a specified period of time to respond to the request, and may comply with its response obligation by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production of the requested document. I.C. §5-14-3-9(b).

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 Clerk expressly denies receiving any of the requests you allege that you submitted and denies sending any response to those alleged requests. You have provided no copy of your requests or any evidence establishing that the request was posted by you on that date. Furthermore, you provide no proof that it was subsequently received by the Clerk or that the Clerk responded. Therefore, I decline to find the Clerk in violation of the Access to Public Records Act for failing to timely respond to your request for records it alleges it never received.

In her response, Ms. Burke states that the Clerk is willing to provide records to you, within its ability to do so. If you still seek a copy of those records, I suggest you submit your request to the Clerk at the following address: 200 West Washington Street, Suite W-122, Indianapolis, IN 46204.

#### CONCLUSION

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

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Chari E. Burke