

December 13, 2004

Herbert Scott Foust
1946 W. U.S. Highway 40
Greencastle, Indiana 46135

Re: Formal Complaint 04-FC-212; Alleged Violation of the Access to Public Records Act by the Starke County Circuit Court

Dear Mr. Foust:

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

BACKGROUND

You allege that on October 25, 2004 you sent a request for records to the Starke County Circuit Court ("Court"). Specifically, you requested all papers, pleadings, orders, filings, motions, letters, exhibits, evidence, transcripts, reports or other materials filed under cause number 75C01-9903-JD-004. You also allege that you did not receive any response, prompting you to file this complaint, which I received on November 12, 2004. I sent Judge David P. Matsey, Starke Circuit Court Judge, a copy of your complaint. He responded on November 18, 2004, and I enclose a copy of his response for your reference.

In his response, Judge Matsey states that no one in his office or the Clerk's office received your request. He also includes information about the cost of copying the documents that you have requested, and states that he will make copies available to you upon your remittance of the copying fee.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless the records are excepted from disclosure. IC 5-14-3-3(a).

An agency receiving a written request for records via U.S. mail is required to respond in writing within seven (7) days of its receipt of the request. IC 5-14-3-9(b). However, the Court states that it did not receive your request for records. You have not been able to demonstrate that your request was mailed in a properly addressed envelope; therefore, I cannot find that the Court violated the Access to Public Records Act by failing to respond to a request that it did not receive. Also, the Court may require that you submit the copying fee sanctioned by IC 5-14-3-8 prior to sending you the record. IC 5-14-3-8(e).

The Court also stated in its response that it sent you an audiotape recording without charge of the hearing from the cause number you requested. Your complaint does not allege that you requested the audiotape or that the Court failed to respond. However, it is apparent that if you did not receive this audiotape, it may have been confiscated by officials at the facility in which you are incarcerated. Any failure of the record to reach its destination would not be a violation of APRA by the Court.

CONCLUSION

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

Sincerely,

Karen Davis
Public Access Counselor

cc: Judge David P. Matsey