

January 18, 2005

Mr. Robert Perry
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 04-FC-231; Alleged Violation of the Access to Public Records Act by the St. Joseph Circuit Court Clerk's Office

Dear Mr. Perry:

This is in response to your formal complaint alleging that the St. Joseph Circuit Court Clerk's Office violated the Access to Public Records Act by failing to respond to your request for records. I find that the St. Joseph County Clerk did not respond timely to your request for records.

BACKGROUND

On November 21, 2004, you sent a request for records to the Clerk of the St. Joseph Circuit Court. Specifically, you requested a copy of the State's discovery in cause no. 71D08-0304-MR-00012, and a copy of the presentence investigation report. You allege in your complaint, filed on December 17, 2004, that the Clerk did not respond.

I sent a copy of your complaint to the Clerk's Office. My office has been in contact with Ms. Lorraine Reed by telephone. She explained that she had responded to you with a copy of the presentence investigation report, but the discovery records that you seek are not maintained by the Clerk's office.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless an exception to disclosure applies to the record or records. Ind.Code 5-14-3-3(a). An agency is required to respond to a record request in a timely manner. The response need not provide the record in every case, but at a minimum, the agency

must acknowledge receipt of a person's request and state its intention to identify any responsive records and respond further.

The APRA requires that when an agency receives a written request for records that is mailed to the agency, the agency must send a written response within seven (7) calendar days of its receipt of the request. IC 5-14-3-9-(b). If the agency denies the record, it must issue the denial in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

It appears that the Clerk's office did not respond at all within seven days of its receipt of your request. Any failure to respond within seven calendar days of the receipt of your request is a violation of the Access to Public Records Act. However, the Clerk has now responded and has indicated that it does not have the discovery records that you requested. I understand that in its response, the Clerk also enclosed a copy of the presentence report.

CONCLUSION

For the foregoing reasons, I find that because its response to your records request was not issued within seven (7) calendar days of its receipt of your request, the St. Joseph Circuit Court Clerk violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Lorraine Reed