

January 19, 2005

Mr. Tyrone Frazier
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 04-FC-237; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion Superior Court

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Clerk of the Marion Superior Court ("Clerk") violated the Access to Public Records Act by failing to give you court records. I find that the Marion Superior Court did not respond appropriately to your request for records.

BACKGROUND

You allege that you submitted to the Clerk a request for the case file in Cause No. 49F189512DF189713. This request was submitted on a form titled "Request for Access to Public Record." This request was denied by Commissioner Nancy Broyles on December 2, 2004. Your formal complaint followed, alleging that you were denied records in violation of the Access to Public Records Act ("APRA").

Chari E. Burke responded in writing to your complaint. In her response, she stated that the Clerk had referred your request to Commissioner Broyles in Criminal Court 5. Commissioner Broyles reportedly had denied your request for the case file because you are represented by the State Public Defender, and should obtain copies of records through his attorney in accordance with Indiana Code 33-40-1-5.

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 under Ind.Code 5-14-3-4. IC 5-14-3-3(a). The court is a public agency under the Access to Public Records Act. IC 5-14-3-2; Administrative Rule 9. Although your complaint was directed specifically to the Clerk of Marion Superior Court, it appears that it referred your request to a Commissioner within the Marion Superior Court. Therefore, my opinion covers the action of the Marion Superior Court, which I refer to as "Court."

With respect to the Court's response to your request for all legal documents in cause number 49F189512DF189713, Commissioner Broyles's response that you were not entitled to records except through your attorney was not in accordance with the Access to Public Records Act. There is nothing in the APRA that would allow a public agency to deny a record on the basis that the requester must utilize his retained counsel or use formal court proceedings in order to get records. APRA stands an independent means to obtain records, even where the requester is actively pursuing a court case.

CONCLUSION

For the foregoing reasons, I find that the Marion Superior Court did not follow the requirements of the Access to Public Records Act in denying you a record because you have retained counsel.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Chari E. Burke