

August 30, 2006

John C. Chupp  
#21879  
Correctional Industrial Facility  
P.O. Box 600  
Pendleton, IN 46064

*Re: Formal Complaint 06-FC-131; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion Circuit Court*

Dear Mr. Chupp:

This is in response to your formal complaint alleging that the Clerk of the Marion Criminal Court 4, known as the Clerk of Marion Circuit Court ("Clerk") violated the Access to Public Records Act by failing to respond to your request for records. I find that the Clerk did not respond to your request in compliance with the Access to Public Records Act.

#### BACKGROUND

You allege in your formal complaint that the Clerk has not responded to your request for records relating to a sentencing modification of David Wayne Kings. You enclosed a copy of your request, including a cause number. The internal address in the request was to the Clerk of Marion Criminal Court in W203, 200 E. Washington Street, Indianapolis.

Ms. Chari Burke, Chief Deputy Clerk, responded to your complaint. I have enclosed a copy of the letter. Ms. Burke stated that the Marion Criminal Court 4 received your request on July 17, and forwarded it to the Clerk's Records Management Division, where it was received on July 21. The Clerk's Office is located in Suite W-122. Ms. Burke stated that she could find no evidence that the Clerk's Office had responded to your request. Nevertheless, personnel from Records Management have been working to locate and compile the documents since receiving the request.

The records are stored in an off-site storage facility because of their age. The Clerk also had to ascertain the corresponding “new” number from the old cause number you provided in order to retrieve your file. Hence, the records would take some time to produce.

When I spoke with Ms. Burke prior to issuing this opinion, she stated that she believed the records had been sent to you around August 18.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). There is no set time under the Access to Public Records Act for actually producing the records, and my office has stated that records should be produced within a reasonable period of time.

Although the Clerk did not receive the request until it was delivered to the Clerk’s Office on July 21, the Clerk should have responded within seven days, or by July 28. If the Clerk did not respond to your request by July 28, the request was deemed denied, in violation of the Access to Public Records Act.

However, the Clerk has been gathering documents, and has likely sent copies to you as of the date of this opinion. I commend the diligence of the Clerk in producing the records, but that does not alter the fact that the Clerk should have issued a responsive letter acknowledging her receipt of your request by July 28.

#### CONCLUSION

For the foregoing reasons, I find that the Clerk of Marion Circuit Court should have responded within seven days to your request for records.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Chari E. Burke