

November 27, 2006

Tyrone Frazier
#910476
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 06-FC-188; Alleged Violation of the Access to Public Records Act by the Marion County Circuit Court Clerk

Dear Mr. Frazier:

This is in response to your formal complaint alleging that Marion County 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 receive your request and consequently was under no duty to respond.

BACKGROUND

You filed your formal complaint alleging that the Clerk failed to respond to your request for records. You requested priority status for your complaint; however, you did not allege any of the circumstances for which priority status may be granted under 62 Ind. Admin. Code 1-1-3. *See* 62 IAC 1-1-2(b). Therefore, I have issued this advisory opinion within 30 days of receiving it.

Chari Burke, Chief Deputy Clerk of the Marion Circuit Court sent me the enclosed response on behalf of the Clerk. Ms. Burke told me that after reviewing the records, the Clerk does not have any documentation showing that she ever received your request for records. However, having now received your request, she is providing a substantive response.

With respect to your request for a certified list of all trials, broken out by trials that went to trial and those that did not go to trial, and those that were rescheduled, from October 16, 2003 through May 3, 2004, Ms. Burke stated that the Clerk does not maintain any such record, and a list will not be created by the Clerk. With respect to your request for the certified list of Judge Hawkins and Commissioner Nancy Boyles' work schedules pertaining to court appointment

times for the same period, she said that the Clerk does not maintain this information, either. Ms. Burke suggested that you seek the latter information directly from the Court, a separate agency from the Clerk.

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). It is obvious that if a public agency has not received a request for a record, it is under no obligation to respond within the timeframes set out in the APRA.

The Clerk has now received your request via your complaint. The response of the Clerk, that the Clerk does not maintain either record, is consistent with the APRA. The Clerk is not required under the APRA to compile information to create a record if no records exist that are responsive to the request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Marion Circuit Court Clerk did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chari Burke