

February 20, 2006

Stuart Showalter
P.O. Box 374
Lebanon, IN 46052

Re: Formal Complaint 06-FC-21; Alleged Violation of the Access to Public Records Act by the Boone County Prosecutor's Office

Dear Mr. Showalter:

This is in response to your formal complaint alleging that the Boone County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act by failing to respond to your request for records. I find that the Prosecutor did not violate the Access to Public Records Act.

BACKGROUND

You mailed to the Prosecutor a letter dated December 12, 2005, requesting the following records:

- Any report, abstract, memorandum, list or other document, in any format, stating the amount of child support payment arrearages for the years 2002-2005 including the rate of collection, the highest arrearage and the average arrearage;
- Any report, abstract, memorandum, list or other document, in any format, detailing the disposition of cases of child support payment arrearages pursued;
- Any policy, statement, rule, provision, law or other communication, in any format, detailing the procedures for collecting child support payment arrearage.

You state in your formal complaint that the Prosecutor has not responded to your request. I sent a copy of your complaint to the Prosecutor, Honorable Todd Meyer. He responded by letter, a copy of which is enclosed for your reference. Mr. Meyer stated that his office has no record of ever receiving your letter requesting the above records. Mr. Meyer further explained that had the office received this request, it would have responded that it did not maintain the requested information, and suggested other ways for you to get this information from other agencies or in disaggregated form from the courts.

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). A public agency that receives a request for a record via U.S. Mail or facsimile must respond within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). A public agency is not required to compile a record or create a record to satisfy a request for a record.

The Prosecutor has averred that he had not received your request dated December 12, 2005. If the Prosecutor did not receive your request, it had no obligation to respond. Therefore, I find that the Prosecutor did not deny your request for a record when it did not respond to a request it did not receive.

The Prosecutor has also stated that no record exists that fulfills your requests for information. The Prosecutor is not required under the APRA to compile the information that you seek in a record at your request. The APRA requires only that existing records maintained by a public agency be made available for inspection and copying. That said, if you believe that the Prosecutor is not disclosing an existing that record that is responsive to your requests, you may file a lawsuit in circuit or superior court to compel disclosure of the record or records, under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Boone County Prosecutor did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Honorable Todd Meyer