

January 16, 2007

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

Re: Formal Complaint 06-FC-215; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion County Circuit Court

Dear Mr. Frazier:

This is in response to your formal complaint alleging that the Clerk of the Marion County Circuit Court ("Clerk") violated the Access to Public Records Act by failing to send you the entire file in your court case. I find that the Clerk did not violate the Access to Public Records Act.

BACKGROUND

You filed your formal complaint with the Office of the Public Access Counselor, contending that the Deputy Clerk whose certification you received falsely stated that you had received a copy of the entire file in your cause. You provided me with the file, but have not specifically stated what records you believe are missing.

I sent a copy of your complaint to the Clerk. Deputy Clerk Chari Burke responded by letter, a copy of which is attached. She explained that she did, in fact, provide a copy of the entire file. Your complaint may be the result of your belief that every order of the court in your cause would contain a corresponding written order. Ms. Burke pointed out that the orders are often filed electronically and would appear in the Chronological Case Summary (CCS) even if no formal order is separately maintained.

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. Ind. Code 5-14-3-3(a). A public record is any material that is created, received, retained, maintained, or filed by or with a public agency. IC 5-14-3-2(m). A public agency is required to disclose only those records that are “public records” within this definition. A public agency is not generally required to create a record under the APRA.

A person who has been denied the right to inspect or copy a public record by a public agency may file an action in superior or circuit court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. IC 5-14-3-9(e). You have alleged that records are missing from the copies that have been provided to you. Ms. Burke has certified, under the penalties for perjury, that the records maintained by the Clerk have been provided to you. This includes all papers, pleadings, orders, records, or other material included in the Clerk’s record.

The Clerk has diligently responded to your requests for records. If you still believe you have not received a record maintained by the Clerk, your only remedy, now that you have this Opinion, is to file a complaint in circuit or superior court.

CONCLUSION

For the foregoing reasons, I find that the Clerk of the Marion Circuit Court has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Elizabeth L. White
Clerk of the Marion Circuit Court