

February 3, 2006

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

*Re: Consolidated Formal Complaints 06-FC-6; 06-FC-13; Alleged Violation of the
Access to Public Records Act by the Clinton County Prosecutor's Office*

Dear Mr. Showalter:

This is in response to your formal complaint alleging that the Clinton County Prosecutor's Office ("Office") violated the Access to Public Records Act ("APRA") by failing to respond or comply with your request for records. I find that because you did not send your request to the Office, you were not entitled to a response under the APRA.

BACKGROUND

Your formal complaint, filed January 4, 2006, stated that on December 9, 2005, you sent a request via U.S. Mail "to the Clinton County Prosecutor's Office seeking the upcoming trial schedule of Louis Evans." As of the date of the complaint, you had not received a response. With your complaint, you supplied a copy of your December 9 request. It is addressed as follows: "Clinton County Prosecutor's Office, Public Information Officer, 58 East Washington Street, Frankfort, IN 46041."

Your formal complaint filed on January 13, 2006, stated that you sent a December 15 request to the Office seeking reports of the financial costs of prosecutions in 2004. As with your December 9 request, you allege that you have not received a response. You also sent the December 15 request to: "Clinton County Prosecutor's Office, Public Information Officer, 58 East Washington Street, Frankfort, IN 46041."

I sent a copy of your complaints to Louis Evans, who is the Clinton County Prosecutor. I sent the complaint to the Office's facsimile number. Prosecutor Evans favored this office with a response to your January 4 complaint. I have enclosed a copy of the response for your reference.

In his complaint response, Prosecutor Evans stated that he had received your December 9, 2005 and December 15, 2005 requests. He received your requests at his private law office, not at the Prosecutor's Office. Therefore, he did not believe he had a duty to respond to an unsigned letter at his private law office. Nevertheless, Prosecutor Evans provided a responsive letter and two pages of records in response to the December 9 request. From the public information that I was able to obtain, Prosecutor Evans has a private law practice at 58 East Washington Street in Frankfort. The Office of the Prosecuting Attorney is located at 475 Courthouse Square, Frankfort.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request by U.S. Mail is required to respond to the request within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). Although you named the Clinton County Prosecutor's Office in your request, you addressed it to the private law office of Louis D. Evans, who serves as the Clinton County Prosecutor. You did not submit your request to any public agency. It is not sufficient to serve a request for a record on an individual officeholder at the person's home or business. Only a public agency is required to respond to a request for a record, not an individual officeholder. Therefore, the Office did not violate the Access to Public Records Act when it failed to respond to a request that it never received.

Because Prosecutor Evans is not a public agency, he did not violate the APRA when he failed to respond to an unsigned letter that arrived at his private law office, which is a separate office from the Prosecutor's Office, which is located at 475 Courthouse Square, Frankfort.

I advise that future requests for records be sent to the public agency at the address of the public agency, not an individual officeholder.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clinton County Prosecutor's Office did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Louis D. Evans