

June 3, 2005

Chester Wilms
DOC #943-594-G417
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 05-FC-86; Alleged Violation of the Access to Public Records Act by the Clerk of the Allen Circuit and Superior Courts

Dear Mr. Wilms:

This is in response to your formal complaint alleging that the Clerk of the Allen Circuit and Superior Courts ("Clerk") violated the Access to Public Records Act ("APRA") by failing to timely respond to your document request. I find that the Clerk did not violate the APRA.

BACKGROUND

On May 4, 2005 you filed a formal complaint with this office alleging that the Clerk had refused to respond to your APRA request and that the "2 week limitation run on." Your complaint was assigned complaint number 05-FC-86.¹ I forwarded a copy of your complaint to the Clerk. The Clerk, Ms. Therese M. Brown, answered your complaint by letter dated May 6, 2005. A copy of that letter is being enclosed for your reference.

Your first request in this matter was received by the Clerk on April 5, 2005. In 2001 you requested a refund from the Clerk of monies that you believed you paid in error. The Clerk at that time told you that you could not have a refund because three years had passed. Your April 5th request to the current clerk was to provide you with a copy of the code cite to back up the refund denial or to provide you with a refund. She responded to that request by letter dated April 7, 2005. In her response she indicated that she was investigating your claim and made some inquiries to you to assist in that investigation.

¹ I wrote to you informally on May 17, 2005 to inform you that I will not accept complaints from you that fail to indicate the date upon which your request was made. This office failed to notice that you had not provided dates for your records request, thus this formal complaint was opened prior to that letter. I may issue this opinion, because the Clerk has provided the dates of your requests.

On April 18, 2005 and April 20, 2005 you sent additional correspondence on this matter to the Clerk. She responded by letter on April 26, 2005. She indicated that she was willing to provide you with a credit for future copy requests. On May 2, 2005 you wrote to her stating that you would prefer a refund. On May 4, 2005 you wrote another letter restating the same. On May 6, 2005 the Clerk instructed the Financial Division of her office to issue a check to you in the amount of \$28.00.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular hours of business. IC 5-14-3-3(a). An agency is required to respond to a request for records within certain timeframes. If a request is mailed, sent by facsimile, or sent by electronic mail, the agency is required to respond within seven days of its receipt of the request. IC 5-14-3-9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. A failure to respond timely to a request for records is deemed a denial under the APRA. IC 5-14-3-9(a).

The Clerk received your request for records on April 5, 2005. She sent you a response on April 7, 2005 indicating that she had received your request and indicating how she intended to follow up. I find that the Clerk did not violate the APRA since her response, sent to you within two (2) days of the receipt of your letter, was well within the seven (7) day requirement.

Additionally, I will note that you requested that the Clerk either provide the requested document or to provide you a refund. APRA does not cover the refund of funds by a public agency. However, since you indicated in your correspondence with her that if the clerk provided a refund there would be no need for the requested document, and she has satisfied your request for a refund, any other issue with respect to the Clerk's compliance with the APRA is rendered moot.

CONCLUSION

For the foregoing reasons, I find that the Clerk of the Allen County Circuit and Superior Courts has not violated Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Therese M. Brown