

October 1, 2007

Tyrone Frazier
Indiana State Prison
PO Box 44
Michigan City, Indiana 46361

Re: Formal Complaint 07-FC-288; Alleged Violation of the Access to Public Records Act by the Marion Superior Court Probation Department

Dear Mr. Frazier:

This is in response to your formal complaint alleging the Marion Superior Court Probation Department (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by not responding to your request for records. A copy of the Department’s response is enclosed for your reference. I find that the Department did not violate the APRA by not responding to a request it did not receive.

BACKGROUND

You allege that you submitted a request to the Department September 12, 2007 for records contained in certain probation case files. You submitted your complaint on September 21, and I received it on September 24, alleging the Department did not respond to your request. You requested priority status for your complaint, alleging you need the requested records for a hearing scheduled in Marion Superior Court on October 3. Pursuant to 62 IAC 1-1-3, your request for priority status has been granted.

The Department responded to your complaint by letter dated September 28 from Lauren Toppen, Assistant Corporation Counsel for the City of Indianapolis. Ms. Toppen indicated the Department did not receive your September 12 request and further indicated you filed this complaint before the statutory period for responding had elapsed. Ms. Toppen indicated that since receipt of your complaint on September 24 was the first the Department was aware of the request, the Department has treated September 24 as the date of receipt of the request and provided a copy of the Department’s response to you dated September 28.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code §5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

Here the Department indicates it did not receive your request for records. If the Department did receive your request, it would have a duty under the APRA to respond within seven days of receipt even if the records requested are not maintained by the Department. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the Department did not receive your request, it did not violate the APRA by not responding.

I will note here that you have become a frequent filer with this office and often submit a complaint to this office without allowing enough time for the public agency to have responded to your request. I also note that it is often the case with your complaints that the public agency has not received your request. I urge you in the future to research the correct information (address, name of agency, person or department responsible for the records, type of records the agency maintains) before submitting your request. Regarding timing for filing of your complaint, the public agency has seven days from the date of receipt of your complaint to respond. I.C. §5-14-3-9(b). Because of the length of time it takes mail to travel through the prison mail system, you should allow at least three days (excluding weekends and holidays) for delivery time on each end of the request. So for this request, for example, you should expect that if you submitted your request on September 12, it would have reached the agency on September 17. The agency would have had until September 24 to respond, and you should anticipate having received the response about September 27. I urge you to consider this timeline when submitting formal complaints to this office in the future.

CONCLUSION

For the foregoing reasons, I find that the Department did not violate the APRA by not responding to a request it did not receive.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Lauren Toppen, Office of Corporation Counsel