

March 7, 2007

William Holly
#946422
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

Re: Formal Complaint 07-FC-31; Alleged Violation of the Access to Public Records Act by the Indiana Public Defender

Dear Mr. Holly:

This is in response to your formal complaint alleging that Indiana Public Defender (“Public Defender”) violated the Access to Public Records Act by failing to give you records that you requested. I find that the Indiana Public Defender is required to provide its disclosable public records, and if appropriate, to give you a written denial that meets the requirements of the Access to Public Records Act.

BACKGROUND

You allege that you requested records from the Public Defender but have been unsuccessful in your efforts. The records involve your criminal case before the Allen Superior Court, Cause Number 02D04-9105-CF-255.

I sent a copy of your complaint to the Public Defender, but have not received a response to your complaint.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency’s regular business hours, 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 is required to respond to the request within seven days or the request is deemed

denied. *See* IC 5-14-3-9(b). Response is not necessarily production of the records. A response should acknowledge that the request has been received and state how and when the agency intends to comply. The records should be produced within a reasonable period of time.

If the public agency intends to deny a written request for a record, it may do so in writing by stating the exemption or exemptions that authorize the public agency to withhold the public record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

I do not have the benefit of a response to your complaint from the Public Defender. I assume for the purposes of this Opinion that the Public Defender has not responded to your request or provided the records. If the Public Defender neither responded within seven days nor provided the records within a reasonable period of time, the Public Defender violated the Access to Public Records Act. In addition, if the Public Defender believes that the records you requested are not disclosable, the Public Defender was required to issue a denial that meets the requirements of the Access to Public Records Act. *See* IC 5-14-3-9(c). You may file a lawsuit in superior court to compel the Public Defender to disclose the records. *See* IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Indiana Public Defender is required to disclose its public records unless the records are exempt. If the records are exempt, the Public Defender is required to cite the exemption or exemptions that apply to the record. In the absence of any response to your complaint, I find that the Public Defender violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Susan Carpenter