



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

February 21, 2011

Mr. Michael J. Shepard
1946 W. U.S. Hwy. 40
Greencastle, IN 46135

Re: Formal Complaint 11-FC-35; Alleged Violation of the Access to Public Records Act by the Vanderburgh County Public Defender Agency

Dear Mr. Shepard:

This advisory opinion is in response to your formal complaint alleging the Agency of the Vanderburgh County Public Defender Agency (the "Agency") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The Agency's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Agency violated the APRA by failing to respond to your January 4, 2011, public records request, which sought an opinion of the Court of Appeals regarding your request for the appointment of a special counsel.

In response, Chief Public Defender Stephen H. Owens states that the Agency has "consistently provided [you] with copies of any documents that [you] have requested that we have in our possession." As to the Court of Appeals decision that you requested, Mr. Owens notes that in a November 1, 2010, letter you sent to the Agency, you reference that Court of Appeals opinion and stated that you "believe[] the November 1, 2010 ruling by the Indiana Court of Appeals affirming the Trial Court's judgment is inconsistent with prior rulings." Mr. Owens questions how you could have made such a statement regarding that ruling if you did not already possess a copy. In any event, Mr. Owens sent you an additional copy of that opinion at the time he responded to your complaint.

ANALYSIS

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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Agency disputes your allegation that it failed to respond to your request; Mr. Owens maintains that the Agency has responded to all of your records requests and provided you with copies of responsive records. Because the public access counselor is not a finder of fact, I express no opinion as to whether or not the Agency actually responded to your request in a timely manner. If the Agency failed to respond to your mailed request within seven days of receiving it, the APRA deems that request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Consequently, if the Agency failed to deny your request in accordance with subsection 9(c) violated the APRA. In any event, the Agency has now provided you with another copy of the Court of Appeals decision. I trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, if the Agency failed to respond to your written request within seven days of receiving it, the Agency violated the APRA. I do not express an opinion as to whether or not the Agency did or did not respond.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Stephen Owens