



STATE OF INDIANA

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August 27, 2012

Michael R. Jent
DOC 973821
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-208; Alleged Violation of the Access to Public Records Act by the Allen County Public Defender's Office

Dear Mr. Jent:

This advisory opinion is in response to your formal complaint alleging the Allen County Public Defender's Office ("Public Defender") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Public Defender. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Public Defender on June 16, 2012. On June 28, 2012, Joy Penson, Office Manager, responded in writing to your request and advised that all records in your file were provided to you in February 2008. The Public Defender further provided a copy of the certified mail receipt and confirmation of delivery of the previous disclosure. On July 2, 2012, you responded to the Public Defender's denial and alleged that the records that were sought were not part of the original disclosure. You further allege that you have received no further communication from the Public Defender subsequent to your July 2, 2012 correspondence.

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." See I.C. § 5-14-3-1. The Public Defender is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Public Defender's public records during regular business hours unless the records are



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excepted from disclosure as confidential or otherwise nondisclosable under the APRA.
See I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). 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 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. *See* I.C. § 5-14-3-9(c). 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.

The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). The Public Defender provided in its June 28, 2012 response that a copy of your file was sent to you in February 2008. The Public Defender further provided copies of the certified mail receipt and confirmation of delivery from the 2008 disclosure. As such, it is my opinion that the Public Defender did not violate the APRA by failing to provide you with multiple copies of an identical record. As the Public Defender had already communicated to you on June 28, 2012 that a copy of your file has previously been provided, it was not obligated to continue to respond to multiple requests for the same records. To the extent that you allege that all records were not previously provided, I would note that the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 11-FC-167*. Advisory opinions are issued based upon the facts presented. If the Public Defender in 2008 provided all records that were responsive to your request and has not received any further records since 2008 that correspond to your June 16, 2012 request, it did not violate the APRA.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Public Defender did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Joy Penson, Allen County Public Defender's Office