



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

January 20, 2015

Mr. Robert A. Gaddie
Plainfield Correctional Facility
727 Moon Road
Plainfield, IN 46168

Re: Formal Complaint 14-FC-318; Alleged Violation of the Access to Public Records Act by the Marion County Public Defender Agency

Dear Mr. Gaddie,

This advisory opinion is in response to your formal complaint alleging the Marion County Public Defender Agency ("Agency") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms Ann Sutton, Esq., Chief Counsel, responded on behalf of the Agency. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 19, 2014.

BACKGROUND

Your complaint dated December 16, 2014, alleges the Marion County Public Defender Agency violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On or about November 25, 2014, you submitted a public records request to the Agency seeking information on a named public defender. Specifically, you were seeking the case numbers he was assigned to represent during a specific period of time. Your complaint suggests you did not receive a response; however, the Agency has provided a copy of the acknowledgement (and denial) letter indicating it had no records responsive to your request.

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 Ind.

Code § 5-14-3-1. The Marion County Public Defender Agency is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Agency's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

It appears as if the Agency did indeed respond within an appropriate amount of time. It is unclear as to why the acknowledgement letter did not reach you. In any case, the records you seek do not exist. An Agency is not required to create a public document to satisfy a records request.

CONCLUSION

It is the Opinion of the Public Access Counselor the Marion County Public Defender Agency did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Ann Sutton, Esq.