



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
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March 18, 2014

Lonnie Garner
2501 Bergan St.
South Bend, IN 46628

Re: Formal Complaint 14-FC-34; Alleged Violation of the Access to Public Records Act by the Public Defender of Indiana

Dear Mr. Garner,

This advisory opinion is in response to your formal complaint alleging the Office of the Public Defender of Indiana ("Public Defender") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Public Defender has responded via Allen England, Esq. Depute State Public Defender. His 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 February 24, 2014.

BACKGROUND

Your complaint dated February 24, 2014, alleges the Public Defender of Indiana 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 February 7, 2014¹, the Public Defender allegedly received two public records requests seeking representation information for a defendant from 2006 and 2007. You specifically name two public defenders as attorneys representing said defendant. On February 10, 2014, you received acknowledgment of your request and also a denial of access due to the Public Defender's claim their office has no record of defending the individual in question.

¹ The Public Records Requests supplied to this Office are dated January 4 and 5, 2014. It is unclear when these requests were served upon the Public Defender.

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 Indiana Public Defender 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 Defender’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).

The Public Defender of Indiana does not have a record of any representation of the individual named in your public records request. The Public Defender represents individuals in post-conviction relief proceedings.² The first attorney you name, Julie P. Verheye, is a Mishawaka attorney not employed by the Public Defender of Indiana. The local court likely hired her to perform public defender services to represent the individual at the trial court level, but likely had no affiliation with the Indiana Public Defender (a separate entity from county-coordinated public defenders).

Similarly, with the second attorney, Greg P. Kaufman, the Public Defender of Indiana has no record he was employed at any time by the State Public Defender. He was likely appointed on the County level; although the Indiana Roll of Attorneys indicates he resigned from active status in 2011 and is now in Ohio.

The Public Defender’s argument you should be searching the records of St. Joseph County is likely correct as they would more likely have the information you seek.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Public Defender of Indiana did not violate the Access to Public Records Act.

Regards,

² <http://www.in.gov/judiciary/defender/2330.htm>

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Allen England, Esq.