

November 21, 2002

Mr. Larriante J. Sumbry
#965137 C-455
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361-0041

Re: *Advisory Opinion 02-FC-63*; Alleged Denial of Access to Public Records by the Public Defender of Indiana.

Dear Mr. Sumbry:

This is written in response to your formal complaint, which was received on November 13, 2002. You have alleged that the Public Defender of Indiana ("Public Defender's Office") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you claim that the Public Defender's Office denied you access to public records by failing to respond to your October 31, 2002 request. Ms. Susan Carpenter, Public Defender of Indiana, responded in writing to your complaint. For the reasons set forth below, it is my opinion that the Public Defender's Office did not respond to you within the time period required under Indiana Code section 5-14-3-9(b) and that this failure to respond constituted a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you sent a request to the Public Defender's Office dated October 31, 2002. You asked for a variety of documents, including handbooks, salary information, and procedural information. You addressed your request to Ms. Carpenter. You had not received a response as of November 8, 2002, so you then filed your formal complaint with this Office.

In response to your complaint, Ms. Carpenter provided a copy of her substantive response to your request as her response to your formal complaint. The Public Defender's Office received your request on November 4, 2002 and their response was dated November 14, 2002.

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." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the

nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Public Defender's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Public Defender's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3 (a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to the information provided, the Public Defender's Office did receive your public records request, but failed to respond within the seven (7) day period after receiving that request. For this reason, it is my opinion that the Public Defender's Office did deny you access in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(b). While this does not alter my opinion, the Public Defender's Office has now provided a response to your October 31st request.

CONCLUSION

It is my opinion that the Public Defender of Indiana did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that this constituted a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Susan Carpenter, SPD w/o enclosure
