



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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December 15, 2010

Mr. Marvin F. Taylor, Sr.
Indiana State Prison
One Park Row
Michigan City, IN 46360

Re: Formal Complaint 10-FC-286; Alleged Violation of the Access to Public Records Act by the Clerk of the Marion County Child Advocacy Center

Dear Mr. Taylor:

This advisory opinion is in response to your formal complaint alleging the Marion County CAC's Office ("CAC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the CAC's response is enclosed for your reference.

BACKGROUND

According to your complaint, on October 15, 2010, you requested from the CAC a copy of its "protocol" policy, and procedures regarding techniques employed by the CAC. You claim the CAC failed to respond to your request.

My office forwarded a copy of your complaint to the CAC. Brandon Elward, attorney for the CAC, responded on its behalf. Mr. Elward states that his office responded to a September 2nd request from you in which you sought "interviewer techniques" and policies and procedures employed by the Marion County Prosecutor's Office, the County Social Workers of Marion County, and the Family Advocacy Center of Indiana. His office responded to you on September 15th. On October 15th, you sent a duplicative request to the executive director of the CAC. In that request, you sought access to the same records that you sought in your September 2nd request. CAC believed that it had already responded as a result of the September 15th response from Mr. Elward, so CAC did not respond to the October 15th request. On December 7th, Mr. Elward sent you a letter informing you that no such records exist at the CAC; the CAC does not have any written protocols, policies, procedures, or interviewer techniques. Moreover, even if CAC did have such records, they would be nondisclosable deliberative material under the APRA.

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.” I.C. § 5-14-3-1. The CAC is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the CAC’s public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, if a 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 a 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. However, an agency is not required to continue to respond to the same request for access to records. *See Op. of the Public Access Counselor 09-FC-211*. Consequently, if the CAC had already responded in full to your September 2nd request through Mr. Elward’s September 15th response, in my opinion it was not obligated to respond to your duplicate October 15th request.

Moreover, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Brandon P. Elward