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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BRENT TAYLOR,  
*Complainant,*

v.

ALLEN COUNTY PUBLIC DEFENDER'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
23-FC-101

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the Allen County Public Defender's Office violated the Access to Public Records Act.<sup>1</sup> The agency did not fully respond despite several invitations to do so. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 27, 2023.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

This opinion addresses a public records request for materials and the lack of response from the public agency.

On September 13, 2023, Brent A. Taylor (Complainant), submitted a public records request to the Allen County Public Defender's Office seeking the following documents:

1. All agreements between the Allen County Public Defender's Office & the Allen County Prosecutor's Office regarding Discovery practices pertaining to individuals represented by the Allen County Public Defender's Office. This includes but is not limited to the following:
  - a. Agreements regarding the distribution of Discovery materials provided to attorneys contracted with your office, by agents of the Allen County Prosecutor's Office during the course of representation, of individuals represented by attorneys contracted with your office
  - b. All policies regarding the distribution of "attorney/client files" to individuals represented by attorneys contracted with your office.
  - c. All policies concerning the obtainment, preservation, and destruction, of the foregoing requested documents.

Taylor did not receive a response and filed his complaint on September 27, 2023.

This office solicited a response from the Director of the Allen County Public Defender's Office on October 2, 2023. On October 4, the Office was responsive and submitted several

court documents regarding discovery in Taylor’s criminal proceedings.

Not seeing anything by way of “agreements” or “policies,” this office sought clarification the same day. After not receiving any response, we once again asked for clarification on November 8 whether any policies existed.

This time, on November 9, the Allen County Public Defender simply stated: “The discovery practices of Allen County are governed by the local trial rules” but did not address the question whether there were any agreements or policies or policies responsive to Taylor’s request.

Therefore, we once again asked the yes-or-no question whether there were any documented agreements of policies. This query was met with silence.

## **ANALYSIS**

### **1. The Access to Public Records Act**

The Access to Public Records Act (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. The Allen County Public Defender’s Office is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Office’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b). This case involves the applicability of APRA's fee schedule compared to a local ordinance.

## **2. Cooperation from public agencies**

Indiana Code section 5-14-5-5 expressly states that a "public agency shall cooperate with the [Public Access] Counselor in any investigation or proceeding under this chapter."

Indeed, the chapter referenced in that statute is the one that governs the formal complaint procedure administered by this office. In other words, public agencies must work with this office in any formal complaint investigation or proceeding.

Here, this office sought a simple yes-or-no confirmation on three separate occasions but only received an unhelpful and dismissive answer. The answer was likely that the Public Defender's Office does not have any documents because those procedures are indeed governed by the Indiana Trial Rules and the County/Local Retention schedules set by the Oversight Committee on Public Records at the State level. We will not, however, make that presumption on an agency's behalf or give it the benefit of the doubt without express confirmation.

Nevertheless, the Public Defender would not grant the professional courtesy of a definitive response despite being asked three distinct times to provide one.

This office is aware that the Allen County Public Defender has a high workload and that Taylor's request is quasi-non-

sensical in context. The public access counselor also has direct experience with Taylor demonstrating difficulty or unwillingness in appropriately navigating both the trial rules and the public access process.

Even so, when this office calls for a response from a public agency, it has a statutory duty to cooperate. We typically do not ask more from agencies than a good faith effort to state a position. Here, we asked for the minimum but were unsuccessful in obtaining even that.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the public access counselor that the Allen County Public Defender's Office violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor

Issued: December 6, 2023