



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
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October 26, 2012

Kevin J. Tolliver  
DOC 199341  
One Park Row  
Michigan City, Indiana 46360

*Re: Formal Complaint 12-FC-307; Alleged Violation of the Access to Public Records Act by the Elkhart County Public Defender's Office*

Dear Mr. Tolliver:

This advisory opinion is in response to your formal complaint alleging the Elkhart County Public Defender's Office ("Public Defender") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Christopher C. Crawford, Attorney, responded on behalf of the Public Defender. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you requested a copy of your client file on three separate occasions from the Public Defender. As of October 15, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Public Defender.

In response to your formal complaint, Mr. Crawford advised that the Public Defender received your request on September 17, 2012. On September 27, 2012, your file was located. After being reviewed, a copy of your file was mailed to you on October 10, 2012. The Public Defender has no record of receiving any other public record requests from you.

## 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 I.C. § 5-14-3-1. The Public Defender is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Public Defender's public records during regular business hours unless the records are

excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 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* I.C. § 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* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. As applicable here, the Public Defender received your written request for records on September 17, 2012. On October 10, 2012, a copy of all records that were responsive to your request was mailed to you. As such, it is my opinion that the Public Defender acted contrary to section 9(b) of the APRA by failing to respond in writing to your request within seven (7) days. However, as the Public Defender has now provided all records that are responsive to your request, I trust that this is in satisfaction of your formal complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Public Defender acted contrary to the APRA by failing to respond in writing to your written request within seven (7) days of receipt. However, as the Public Defender has not provided to you all records that are responsive to your request, I trust that this is in satisfaction of your formal complaint.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a stylized "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Christopher C. Crawford